

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 2944**

OFFERED BY MR. BLILEY

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

2 (a) SHORT TITLE.—This Act may be cited as the
3 “Electricity Competition and Reliability Act”.

4 (b) TABLE OF CONTENTS.—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purpose.
- Sec. 3. State laws or regulations not affected.

TITLE I—OPEN TRANSMISSION ACCESS

- Sec. 101. Clarification of State authority regarding retail electric competition; clarification of Federal and State jurisdiction.
- Sec. 102. Federal jurisdiction over interstate transmission of electric energy.
- Sec. 103. Regional transmission organizations.
- Sec. 104. Regional transmission siting agencies.
- Sec. 105. Expansion of interstate transmission facilities.
- Sec. 106. Conforming amendments.
- Sec. 107. Savings clause.

TITLE II—ELECTRIC RELIABILITY

- Sec. 201. Electric reliability.

TITLE III—CONSUMER PROTECTION

- Sec. 301. Electric supplier information disclosure.
- Sec. 302. Consumer privacy.
- Sec. 303. Electric supply unfair trade practices.
- Sec. 304. Universal and affordable service.
- Sec. 305. Definitions.

TITLE IV—MERGERS

- Sec. 401. Electric company mergers and disposition of property.
- Sec. 402. Elimination of review by the Nuclear Regulatory Commission.

Sec. 403. Antitrust savings clause.

TITLE V—PROMOTING COMPETITION

Subtitle A—Public Utility Holding Company Act of 1935

- Sec. 501. Definitions.
- Sec. 502. Repeal of the Public Utility Holding Company Act of 1935.
- Sec. 503. Federal access to books and records.
- Sec. 504. State access to books and records.
- Sec. 505. Exemption authority.
- Sec. 506. Affiliate transactions.
- Sec. 507. Applicability.
- Sec. 508. Effect on other regulations.
- Sec. 509. Enforcement.
- Sec. 510. Savings provisions.
- Sec. 511. Implementation.
- Sec. 512. Transfer of resources.
- Sec. 513. Effective date.
- Sec. 514. Conforming amendment to the Federal Power Act.

Subtitle B—Public Utility Regulatory Policies Act of 1978

- Sec. 521. Prospective repeal.
- Sec. 522. Recovery of costs.
- Sec. 523. Definitions.

Subtitle C—Additional Provisions Promoting Competition

- Sec. 531. Aggregation.
- Sec. 532. Interconnection.

TITLE VI—FEDERAL ELECTRIC UTILITIES

Subtitle A—Tennessee Valley Authority

- Sec. 601. Definitions.
- Sec. 602. Wholesale competition in the Tennessee Valley Region.
- Sec. 603. Tennessee Valley Authority power sales.
- Sec. 604. Tennessee Valley Authority electric generation facilities.
- Sec. 605. Renegotiation of all requirements power contracts.
- Sec. 606. Regulation of Tennessee Valley Authority transmission system.
- Sec. 607. Regulation of Tennessee Valley Authority distributors.
- Sec. 608. Stranded cost recovery.
- Sec. 609. Application of antitrust law.
- Sec. 610. Savings provision.

Subtitle B—Bonneville Power Administration

- Sec. 621. Definitions.
- Sec. 622. Regulation of Bonneville Transmission System.
- Sec. 623. Surcharge on transmission rates to recover nonrecoverable power costs.
- Sec. 624. Limit on retail sales by Bonneville Power Administration.
- Sec. 625. Acquisition of new major generating resources.
- Sec. 626. Application of antitrust law.
- Sec. 627. Conforming amendments.

Subtitle C—Other Power Marketing Administrations

- Sec. 631. Definitions.
- Sec. 632. Wholesale power sales by Federal power marketing administrations.
- Sec. 633. Regulation of Federal power marketing administration transmission systems.
- Sec. 634. Accounting.
- Sec. 635. Application of antitrust law.

TITLE VII—ENVIRONMENTAL PROVISIONS

- Sec. 701. Renewable energy production incentive.
- Sec. 702. Net metering.
- Sec. 703. State renewable energy portfolio standards.

TITLE VIII—PROVISIONS RELATING TO INTERNAL REVENUE CODE

【Text of title VIII identical to text of title VIII of H.R. 2944】

TITLE IX—MISCELLANEOUS PROVISIONS

- Sec. 901. Study.
- Sec. 902. Study of State regulation.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—The Congress finds the following:

3 (1) Electricity is generated, transmitted, dis-
4 tributed, and sold in interstate commerce and used
5 in virtually every home, commercial enterprise, and
6 manufacturing facility in the United States and sub-
7 stantially affects interstate commerce in other goods
8 and services.

9 (2) Americans consume electricity worth more
10 than \$250,000,000,000 a year, approximately half of
11 which is for residential purposes. The monthly elec-
12 tric utility bill is one of the largest expenses for most
13 households.

14 (3) Traditional monopoly rate-of-return regula-
15 tion of electricity has stifled competition, resulting in

1 high electricity rates for many consumers and few
2 incentives for technological innovation and good cus-
3 tomer service by electric utilities.

4 (4) Twenty-four States, representing over
5 163,000,000 people and over 60 percent of the pop-
6 ulation of the United States, have approved pro-
7 grams to allow consumers to choose their retail elec-
8 tric suppliers. State retail competition laws have ad-
9 dressed stranded cost recovery, public benefits, and
10 other issues, and Congress encourages the remaining
11 States to address stranded cost recovery as they
12 open their retail electric markets.

13 (5) High electricity rates are regressive, placing
14 a disproportionate burden on low-income ratepayers.
15 A competitive electric generation industry will pro-
16 vide benefits to all consumers by fostering fairness,
17 innovation, and efficiency, rather than allow cost
18 shifting that lowers rates to some consumers but
19 raises rates to others.

20 (6) The cost of electricity has a direct effect on
21 the price, profitability, and competitiveness of goods
22 and services produced in the United States.

23 (7) Lower priced electricity and improved reli-
24 ability can be realized by competition among electric
25 suppliers.

1 (8) The development of vigorous competition in
2 the retail electric markets will—

3 (A) reduce the costs of electric energy to
4 even the smallest consumers of electricity;

5 (B) create jobs as American businesses are
6 able to lower costs and better compete in world
7 markets and against foreign competition here at
8 home;

9 (C) result in a more efficient utility indus-
10 try; and

11 (D) improve the services available to con-
12 sumers.

13 (9) Federal programs to benefit rural con-
14 sumers have succeeded, and rural America has been
15 electrified. However, competition will assure reliable,
16 reasonably priced rural electric service. Rural con-
17 sumers should be able to purchase a broad range of
18 services from retail electric suppliers.

19 (10) The Nation's interconnected electricity
20 generation, transmission, and local distribution sys-
21 tems critically affect the economy and productivity
22 of the United States, and the health, safety, welfare,
23 and security of all Americans.

24 (11) Congress has authority to enact laws,
25 under the Commerce Clause of the United States

1 Constitution, regarding the generation, transmission,
2 distribution, and sale of electric energy in interstate
3 commerce.

4 (12) The success of competition in the whole-
5 sale electric market under the Energy Policy Act of
6 1992 and open access under Orders No. 888 and
7 889 of the Federal Energy Regulatory Commission,
8 as well as innovations in electric generation and
9 transmission technologies, indicate that retail elec-
10 tric competition will substantially benefit all classes
11 of United States electric consumers, including resi-
12 dential, commercial, industrial, and other consumers.

13 (b) PURPOSE.—The purpose of this Act is to benefit
14 American electric consumers through lower electric rates,
15 higher quality services, and a more robust United States
16 economy by encouraging retail and wholesale competition
17 in electric markets and to provide consumers with reliable
18 electric service, and for other purposes.

19 **SEC. 3. STATE LAWS OR REGULATIONS NOT AFFECTED.**

20 To the extent that any State law or regulatory order
21 adopted before the date three years after the date of enact-
22 ment of this Act addresses any matter addressed by any
23 of the following provisions, such State law or regulatory
24 order shall govern such matter in lieu of the following pro-
25 visions:

1 (1) Title III of this Act (relating to consumer
2 protection).

3 (2) Section 210(f) of the Federal Power Act, as
4 added by section 532 of this Act (relating to inter-
5 connection).

6 (3) Section 219 of the Federal Power Act, as
7 added by section 531 of this Act (relating to aggre-
8 gation).

9 (4) Section 702 of this Act (relating to net me-
10 tering).

11 **TITLE I—OPEN TRANSMISSION** 12 **ACCESS**

13 **SEC. 101. CLARIFICATION OF STATE AUTHORITY REGARD-** 14 **ING RETAIL ELECTRIC COMPETITION; CLARI-** 15 **FICATION OF FEDERAL AND STATE JURISDIC-** 16 **TION.**

17 (a) STATE AUTHORITY TO ORDER RETAIL ELECTRIC
18 COMPETITION.—Section 201(b) of the Federal Power Act
19 is amended by adding the following new paragraph after
20 paragraph (2):

21 “(3) This Act shall not affect the authority of a State
22 or municipality to require retail electric competition or to
23 require the unbundling of transmission and local distribu-
24 tion service for the delivery of electric energy directly to
25 a retail electric consumer.”.

1 (b) CLARIFICATION OF FEDERAL JURISDICTION.—

2 Section 201(a) of the Federal Power Act and section
3 201(b)(1) of such Act are each amended by inserting after
4 “ transmission of electric energy in interstate commerce”
5 the following: “(including the transmission of electric en-
6 ergy in interstate commerce that is sold at retail)”.

7 (c) CLARIFICATION OF STATE JURISDICTION.—The
8 last sentence of section 201(b)(1) of the Federal Power
9 Act is amended to read as follows: “The Commission shall
10 have jurisdiction over all facilities for such transmission
11 or sale of electric energy, but shall not have jurisdiction,
12 except as specifically provided in this Part and the Part
13 next following, over facilities used for the generation of
14 electric energy or over facilities used in local distribution
15 or only for the transmission of electric energy in intrastate
16 commerce, or over facilities for the transmission of electric
17 energy consumed wholly by the transmitter, or over the
18 sale of electric energy at retail.”.

19 (d) STATE PUBLIC PURPOSE CHARGES.—Section
20 201(b) of the Federal Power Act is amended by adding
21 the following new paragraph after paragraph (3):

22 “(4) This Act shall not affect the authority of a State
23 or municipality to require as a charge for delivery of elec-
24 tric energy to, or as a condition for the purchase or receipt
25 of electric energy by, any retail electric consumer located

1 in such State the payment of any charge deemed necessary
2 by such State or municipality for any purpose, including
3 any of the following:

4 “(A) To recover transition costs.

5 “(B) To ensure that adequate electric service is
6 available to all retail electric consumers served by a
7 local distribution company.

8 “(C) To ensure and enhance the reliability of
9 retail electric service.

10 “(D) To fund assistance to low-income retail
11 electric consumers.

12 “(E) To encourage environmental, emerging en-
13 ergy technology, energy efficiency, or energy con-
14 servation programs.

15 “(F) To provide for transition costs of electric
16 utility workers.

17 Nothing in this paragraph shall require a State or munic-
18 ipality to impose any such charges.”.

19 (e) DETERMINATION OF TRANSMISSION FACILI-
20 TIES.—Section 201 of the Federal Power Act is amended
21 by adding the following new subsection at the end thereof:

22 “(h) DETERMINATION OF TRANSMISSION FACILI-
23 TIES.—

24 “(1) DETERMINATION.—Upon application by a
25 State commission, electric utility, transmitting util-

1 ity, or local distribution company, the Commission
2 may determine whether a particular facility used for
3 the transportation of electric energy is a trans-
4 mission facility subject to the jurisdiction of the
5 Commission.

6 “(2) COMMISSION FINDINGS.—The Commission
7 shall make a determination under paragraph (1) in
8 accordance with the following factors associated with
9 the facility:

10 “(A) Function and purpose.

11 “(B) Size.

12 “(C) Location.

13 “(D) Voltage level and other technical
14 characteristics.

15 “(E) Historical, current and planned usage
16 patterns.

17 “(F) Interconnection and coordination with
18 other facilities.

19 “(G) Any other factor the Commission
20 deems relevant.

21 In making such determination, the Commission shall
22 consider any position taken by the appropriate State
23 commission.”.

1 (f) FEDERAL FACILITIES.—(1) Section 201 of the
2 Federal Power Act, as amended by subsection (e) of this
3 section, is amended by adding at the end the following:

4 “(i) Nothing in this Act preempts the application of
5 State utility laws with respect to the retail sale of electric
6 energy to or the provision of local distribution service to
7 a facility of a department, agency, or instrumentality of
8 the United States.”.

9 (2) Section 201(d) of the Federal Power Act is
10 amended by adding the following immediately before the
11 period at the end thereof: “; except that nothing in this
12 section shall be construed as providing jurisdiction to the
13 Commission pursuant to this Act under circumstances
14 where any department, agency, or instrumentality of the
15 United States received electric service as of July 1, 1999,
16 which service was priced pursuant to retail tariffs ap-
17 proved in accordance with State law by a State regulatory
18 agency.”.

19 (3) Section 212(h) of the Federal Power Act is
20 amended by adding the following new sentence at the end
21 thereof: “Nothing in this subsection and no order issued
22 under this Act shall require the transmission of electric
23 energy to any Federal department, agency, or instrumen-
24 tality that purchases electric energy in a manner incon-
25 sistent with State law governing the provision of electric

1 utility service, including State utility commission rulings
2 and electric utility franchises, certificates, or service terri-
3 tories established pursuant to State statute, State regula-
4 tion, or State-approved territorial agreements.”.

5 (4) Section 3(19) of the Federal Power Act is amend-
6 ed by adding the following immediately before the period:
7 “, but shall not include any department, agency, or instru-
8 mentality that purchases electric energy from any electric
9 utility for consumption or distribution or for both con-
10 sumption and distribution within the boundaries where
11 such department, agency, or instrumentality owns, oper-
12 ates, or controls facilities for such consumption or dis-
13 tribution.”.

14 **SEC. 102. FEDERAL JURISDICTION OVER INTERSTATE**
15 **TRANSMISSION OF ELECTRIC ENERGY.**

16 (a) UNBUNDLED TRANSMISSION RATES AND OPER-
17 ATIONS.—

18 (1) IN GENERAL.—Section 205 of the Federal
19 Power Act is amended by adding the following new
20 subsection at the end thereof:

21 “(g) UNBUNDLED TRANSMISSION RATES AND OPER-
22 ATIONS.—(1) Not later than one year after the date of
23 enactment of this subsection, the Commission, in consulta-
24 tion with appropriate State commissions, shall promulgate

1 a final rule requiring each transmitting utility (other than
2 a utility to which section 212(k) applies) to—

3 “(A) have on file with the Commission, subject
4 to this section and section 206, a schedule of rates
5 and charges (including the terms and conditions) for
6 the transmission of electric energy in interstate com-
7 merce that is separate (‘unbundled’) from the rates,
8 charges, and terms and conditions applicable to the
9 sale of electric energy and to local distribution; and
10 “(B) separate (‘unbundle’) the operation of its
11 transmission system from any other operations.

12 “(2) The rule under paragraph (1) shall require each
13 transmitting utility to provide, pursuant to the standards
14 and procedures of this section and section 206, trans-
15 mission services in interstate commerce on a not unduly
16 discriminatory or preferential basis within the meaning of
17 this section and section 206. In exercising its authority
18 under this subsection over a transmitting utility that is
19 not a public utility (other than the Federal power mar-
20 keting agencies and the Tennessee Valley Authority), the
21 Commission may remand transmission rates to such utility
22 for review and revision where necessary.

23 “(3)(A) The rule under paragraph (1) shall provide
24 criteria and procedures to exempt certain transmitting
25 utilities from paragraphs (1) and (2). The Commission

1 shall exempt from such rules any transmitting utility
2 that—

3 “(i)(I) sells no more than 4,000,000 megawatt
4 hours of electric energy per year; and

5 “(II) does not own or operate any transmission
6 facilities that are part of the bulk-power system (as
7 defined by the Commission); or

8 “(ii) meets other criteria that the Commission
9 determines to be in the public interest.

10 “(B)(i) The procedures established by the Commis-
11 sion under this paragraph shall permit exemptions, after
12 notice and opportunity for comment, based on a letter ap-
13 plication containing a sworn statement, by a representa-
14 tive legally authorized to bind the applicant, attesting to
15 the facts demonstrating that the applicant meets the ex-
16 emption standards. A good faith application for an exemp-
17 tion shall be deemed granted unless, within 60 days of
18 its receipt of such application, the Commission makes a
19 determination that the applicant does not meet the exemp-
20 tion criteria.

21 “(ii) Upon complaint of any electric utility or trans-
22 mitting utility and after notice and opportunity for com-
23 ment, the Commission may revoke an exemption if it de-
24 termines the transmitting utility does not satisfy the ex-
25 emption criteria.

1 “(4) Not later than 180 days after the date on which
2 the final rule under paragraph (1) is promulgated, the
3 Commission shall approve schedules of rates and charges
4 (including terms and conditions) under paragraph (1)(A)
5 and shall require that transmitting utilities separate oper-
6 ations in accordance with paragraph (1)(B).

7 “(5) Nothing in this subsection shall affect the au-
8 thority of State commissions with respect to the trans-
9 mission component of sales of electric energy at retail
10 pending the establishment or approval by the Commission
11 pursuant to this subsection of schedules of rates and
12 charges for the transmission of electric energy in inter-
13 state commerce. Nothing in this subsection shall prevent
14 a State from requiring or permitting a single (“bundled”)
15 rate or charge to be used for the sale of electric energy
16 at retail after the establishment or approval by the Com-
17 mission under this subsection of a rate or charge (includ-
18 ing terms and conditions) for the transmission of such
19 electric energy.

20 “(6) In promulgating the rule under this subsection,
21 the Commission, in consultation with appropriate State
22 commissions, shall ensure that public utilities, electric util-
23 ities, and Federal power marketing agencies have the op-
24 portunity to reserve sufficient transmission capacity on a

1 not unduly discriminatory or preferential basis to enable
2 them to serve firm wholesale and retail customers.”.

3 (2) TRANSITION RATES.—(A) In the case of a
4 transmitting utility whose rates or charges for the
5 sale of electric energy at retail (including the trans-
6 mission component thereof) have been established, or
7 limited to a maximum amount, by a State commis-
8 sion, the Commission shall establish or approve rates
9 or charges for the transmission of electric energy in
10 interstate commerce under section 205(g) of the
11 Federal Power Act equal to the rates or charges for
12 the transmission of electric energy established by the
13 State commission (including the transmission com-
14 ponent thereof).

15 (B) Subparagraph (A) shall apply only to rates
16 and charges established by a State commission be-
17 fore the date of the enactment of this Act.

18 (C)(i) The rates and charges established or ap-
19 proved by the Commission as provided in subpara-
20 graph (A) shall apply until January 1, 2004, except
21 as provided in clause (ii).

22 (ii) If the rates or charges established by a
23 State commission were established in connection
24 with the establishment of retail electric competition
25 in that State, and are to remain in effect for a speci-

1 fied period of time, determined as of the date of the
2 enactment of this Act, then the rates and charges
3 established or approved by the Commission as pro-
4 vided in subparagraph (A) shall apply for such speci-
5 fied period or for a shorter period subsequently es-
6 tablished by the State.

7 (D) The terms and conditions for transmission
8 under the rule under section 205(g) of the Federal
9 Power Act shall apply to any transmission that is
10 subject to rates or charges established or approved
11 by the Commission as provided in subparagraph (A).

12 (E) The Commission shall establish or approve
13 rates and charges under subparagraph (A) after
14 consultation with the appropriate State commissions.

15 (F) The terms used in this paragraph shall
16 have the same meaning as when used in the Federal
17 Power Act.

18 (b) RETAIL WHEELING IN RETAIL COMPETITION
19 STATES.—Section 212(h) of the Federal Power Act is
20 amended as follows:

21 (1) By inserting “(1)” before “No”.

22 (2) By striking “(1)”, “(2)”, “(A)”, and “(B)”
23 and inserting in their places “(A)”, “(B)”, “(i)”,
24 and “(ii)” respectively.

1 (3) By striking from redesignated paragraph
2 (1)(B)(ii) “the date of enactment of this subsection”
3 and inserting “October 24, 1992,”.

4 (4) By adding the following new paragraph at
5 the end:

6 “(2) Notwithstanding paragraph (1), the Commission
7 may issue an order that requires the transmission of elec-
8 tric energy for purposes of a sale of such energy to retail
9 electric consumers served by local distribution facilities
10 that are subject to open access, consistent with State
11 law.”.

12 (c) CONFORMING AMENDMENTS.—(1) Section 3(23)
13 of the Federal Power Act (16 U.S.C. 796) is amended to
14 read as follows:

15 “(23) TRANSMITTING UTILITY.—The term
16 ‘transmitting utility’ means any entity (including a
17 State or municipal entity) that owns or operates fa-
18 cilities used for the transmission of electric energy in
19 interstate commerce.”.

20 (2) Section 3(24) of the Federal Power Act is amend-
21 ed to read as follows:

22 “(24) ‘transmission services’ means the trans-
23 mission of electric energy sold or to be sold.”.

24 (3) Section 211(a) of the Federal Power Act is
25 amended by striking “for resale”.

1 (4) Section 212(a) of the Federal Power Act is
2 amended by striking “wholesale” each time it appears, ex-
3 cept the last time.

4 (5) Section 3 of the Federal Power Act is amended
5 by adding the following at the end thereof:

6 “(26) LOCAL DISTRIBUTION COMPANY.—The
7 term ‘local distribution company’ means any entity
8 which owns, controls, or operates, for public use,
9 local distribution facilities.

10 “(27) LOCAL DISTRIBUTION FACILITIES.—The
11 term ‘local distribution facilities’ means any facilities
12 used for the local distribution of electric energy.
13 Such term does not include any facilities determined
14 under section 201(h) to be transmission facilities.

15 “(28) MARKET PARTICIPANT.—The term ‘mar-
16 ket participant’ means any entity that generates,
17 sells, or aggregates electric power (other than State-
18 ordered transition or default service) that is trans-
19 mitted on the transmission system operated by a re-
20 gional transmission organization. Any entity that is
21 the owner of the regional transmission organization
22 and does not generate, sell, or aggregate electric
23 power shall not be considered a market participant,
24 except that an entity is not a market participant by
25 reason of providing State-ordered transition service,

1 default service, or generation service necessary to
2 provide reactive power or such other generation serv-
3 ice incidental to provide transmission service.

4 “(29) OPEN ACCESS.—The term ‘open access’,
5 with respect to local distribution facilities, means
6 that the local distribution company that owns, con-
7 trols, or operates the facilities offers not unduly dis-
8 criminatory or preferential access to the facilities.

9 “(30) RETAIL ELECTRIC CONSUMER.—The
10 term ‘retail electric consumer’ means any person
11 who purchases electric energy for ultimate consump-
12 tion.

13 “(31) RETAIL ELECTRIC SUPPLIER.—The term
14 ‘retail electric supplier’ means any person who sells
15 electric energy to a retail electric consumer for ulti-
16 mate consumption.

17 “(32) STATE REGULATED ELECTRIC UTILITY.—
18 The term ‘State regulated electric utility’ means any
19 electric utility with respect to which a State commis-
20 sion has ratemaking authority.”.

21 (d) FOREIGN COMMERCE.—(1) Section 201(c) of the
22 Federal Power Act (16 U.S.C. 824(c)) is amended by
23 striking “thereof:” and inserting “thereof (including con-
24 sumption in a foreign country),”.

1 (2) Section 202(f) of the Federal Power Act is re-
2 pealed.

3 (e) CERTAIN WHOLESale STRANDED COSTS.—Sec-
4 tion 206 of the Federal Power Act is amended by adding
5 the following new subsection after subsection (d):

6 “(e) CERTAIN WHOLESale STRANDED COSTS.—The
7 Commission shall authorize recovery of wholesale stranded
8 costs of a public utility or transmitting utility that occur
9 when retail electric consumers cease to be served by that
10 public utility or transmitting utility by reason of the estab-
11 lishment of a local distribution company owned or oper-
12 ated by a State or a political subdivision of a State serving
13 such consumers. In calculating such wholesale stranded
14 costs, the Commission shall use a reasonable expectation
15 period that is based on the weighted average remaining
16 useful life of generation assets owned or power purchased
17 under contract by the public utility and included in whole-
18 sale or retail rates in effect on July 9, 1996. This sub-
19 section shall apply to wholesale stranded cost determina-
20 tions made by the Commission before, on, or after the date
21 of enactment of this subsection.”.

22 **SEC. 103. REGIONAL TRANSMISSION ORGANIZATIONS.**

23 (a) FINDINGS.—The Congress—

24 (1) finds that the formation of regional trans-
25 mission organizations will improve the transmission

1 of electric energy in interstate commerce and the re-
2 liability of the bulk-power system; and

3 (2) encourages the formation of regional trans-
4 mission organizations.

5 (b) REGIONAL TRANSMISSION ORGANIZATIONS.—

6 Section 202 of the Federal Power Act is amended by add-
7 ing the following new subsections after subsection (g):

8 “(h) REGIONAL TRANSMISSION ORGANIZATIONS.—

9 “(1) IN GENERAL.—After notice and an oppor-
10 tunity for a hearing, the Commission shall approve
11 an application by one or more transmitting utilities
12 to establish or join a regional transmission organiza-
13 tion if the Commission determines the regional
14 transmission organization meets the standards in
15 paragraph (2). The Commission shall apply the
16 standards in paragraph (2) without regard to the
17 specific structure, type, or form of proposed regional
18 transmission organization. If a transmitting utility
19 applies to establish or join a regional transmission
20 organization that meets the standards in paragraph
21 (2), the Commission shall have no authority to re-
22 quire the transmitting utility to participate in a dif-
23 ferent regional transmission organization. Nor shall
24 the Commission have the authority to add terms or
25 conditions different from those in such application

1 without affording a transmitting utility the oppor-
2 tunity of withdrawing from the transmission organi-
3 zation if it finds those additional terms and condi-
4 tions to be unacceptable. The Commission may ap-
5 prove a regional transmission organization that does
6 not meet all the standards in paragraph (2) if the
7 Commission determines that the regional trans-
8 mission organization contains features that are con-
9 sistent with or superior to the standards listed in
10 paragraph (2).

11 “(2) STANDARDS FOR REGIONAL TRANSMISSION
12 ORGANIZATIONS.—The Commission shall make a de-
13 termination under paragraph (1) in accordance with
14 the following standards:

15 “(A) INDEPENDENCE.—The regional
16 transmission organization must be independent
17 of all market participants, and no market par-
18 ticipant or class of market participants may ex-
19 ercise control over the operation of the regional
20 transmission organization. For purposes of de-
21 termining whether a regional transmission orga-
22 nization is independent of all market partici-
23 pants, ownership of passive, nonvoting interests
24 in a regional transmission organization, or own-
25 ership of 5 percent or less of the voting inter-

1 ests in the regional transmission organization,
2 shall be deemed not to confer control over the
3 regional transmission organization for purposes
4 of this subparagraph. For purposes of this sub-
5 paragraph, the term ‘voting interest’ shall not
6 include the right to participate in major organic
7 corporate changes to the regional transmission
8 organization that affect the ownership status of
9 the nonvoting interests.

10 “(B) SCOPE AND CONFIGURATION.—The
11 regional transmission organization must operate
12 transmission facilities that comprise an appro-
13 priate scope and regional configuration. In de-
14 termining whether a regional transmission orga-
15 nization contains an appropriate scope and con-
16 figuration, the Commission shall consider the
17 following factors:

18 “(i) Performance of essential regional
19 transmission organization functions.

20 “(ii) Electricity trading patterns.

21 “(iii) Exercise of market power not
22 subject to State regulation.

23 “(iv) Existing control areas.

24 “(v) Existing regional transmission
25 entities.

1 “(vi) Contiguity of geographic area.

2 “(vii) Interconnection of regional
3 transmission organization transmission
4 systems.

5 “(viii) International boundaries.

6 “(C) OPERATIONAL AUTHORITY.—The re-
7 gional transmission organization must possess
8 operational authority over all transmission fa-
9 cilities under its control.

10 “(D) EXPANSION.—The regional trans-
11 mission organization must be responsible (i) for
12 planning necessary additions and upgrades to
13 the transmission system under the operational
14 control of the regional transmission organiza-
15 tion that will enable it to provide efficient, reli-
16 able, not unduly discriminatory or preferential
17 transmission service; and (ii) for coordinating
18 such efforts with the appropriate State authori-
19 ties.

20 “(3) FEDERAL TRANSMISSION FACILITIES.—
21 The Tennessee Valley Authority, the Bonneville
22 Power Administration, the Southwestern Power Ad-
23 ministration, and the Western Area Power Adminis-
24 tration are each authorized to participate in a re-
25 gional transmission organization after conducting a

1 public process in the relevant region to receive com-
2 ments. Notwithstanding any other law, participation
3 may include delegation of operation and control of
4 the transmission system concerned to a regional
5 transmission organization or other method of par-
6 ticipation, under terms and conditions the Tennessee
7 Valley Authority or the power marketing administra-
8 tion concerned determines necessary or appropriate,
9 including being bound by operational and other or-
10 ders of the regional transmission organization and
11 by the results of arbitration of disputes with the or-
12 ganization or with other participants.

13 “(4) STATE AUTHORITY NOT AFFECTED.—
14 Nothing in this subsection affects the authority of
15 States to regulate transmission facility maintenance,
16 planning, siting, and other utility functions.

17 “(5) EXISTING REGIONAL TRANSMISSION ORGA-
18 NIZATION.—Nothing in this subsection authorizes
19 the Commission to require any change in a regional
20 transmission organization or comparable organiza-
21 tion approved by the Commission or in operation be-
22 fore the date of enactment of this subsection, except
23 that any transmitting utility that is a member of
24 such organization may file an application pursuant
25 to this subsection to join another regional trans-

1 mission organization or to seek changes to any exist-
2 ing organization of which it is a member.”.

3 **SEC. 104. REGIONAL TRANSMISSION SITING AGENCIES.**

4 (a) IN GENERAL.—Part II of the Federal Power Act
5 (16 U.S.C. 824 and following) is amended by adding at
6 the end the following section:

7 **“SEC. 215. REGIONAL TRANSMISSION SITING AGENCIES.**

8 “(a) CONSENT.—The consent of Congress is given for
9 compacts among two or more States to establish regional
10 transmission siting agencies to—

11 “(1) facilitate coordination among the States
12 within a particular region with regard to the siting
13 of future transmission facilities;

14 “(2) carry out State transmission facility siting
15 responsibilities;

16 “(3) meet the other requirements of this section
17 and rules prescribed by the Commission under this
18 section; and

19 “(4) otherwise be consistent with the public in-
20 terest.

21 “(b) AUTHORITY.—If the Commission determines
22 that a compact meets the requirements of subsection (a),
23 the agency established under the compact has such au-
24 thority with respect to matters otherwise within the juris-
25 diction of the Commission as is expressly provided in the

1 compact and is necessary or appropriate for carrying out
2 the siting responsibilities of the agency. The Commission's
3 determination under this section may be subject to any
4 terms and conditions the Commission determines are nec-
5 essary or appropriate to ensure that the compact is in the
6 public interest.

7 “(c) RULES.—(1) The Commission shall prescribe by
8 rule—

9 “(A) criteria for determining whether a com-
10 pact is consistent with subsection (a); and

11 “(B) standards for its administration of a re-
12 gional transmission siting agency established under
13 the compact.

14 “(2) The rule shall require that—

15 “(A) a regional transmission siting agency oper-
16 ate within a region that includes all or part of each
17 State that is a party to the compact;

18 “(B) a regional transmission siting agency be
19 composed of one or more members from each State
20 that is a party to the compact;

21 “(C) each participating State vest in the re-
22 gional transmission siting agency the authority to
23 carry out the compact and this section; and

24 “(D) the agency follow reasonable procedures in
25 making its decisions, in governing itself, and in car-

1 rying out its authorities under the compact, includ-
2 ing judicial review.

3 “(3) The rule may include any other requirement to
4 ensure that the regional transmission siting agency’s orga-
5 nization, practices, and procedures are sufficient to carry
6 out this section and the rules promulgated under it.

7 “(d) TERMINATION.—The Commission, after notice
8 and opportunity for comment, may terminate the approval
9 of a compact under this section at any time if it deter-
10 mines that the regional transmission siting agency fails
11 to comply with the provisions of this section or Commis-
12 sion rules under subsection (c) or that the compact is con-
13 trary to the public interest.”.

14 **SEC. 105. EXPANSION OF INTERSTATE TRANSMISSION FA-**
15 **CILITIES.**

16 (a) IN GENERAL.—Part II of the Federal Power Act
17 (16 U.S.C. 824 and following) is amended by adding at
18 the end the following section:

19 **“SEC. 216. EXPANSION OF INTERSTATE TRANSMISSION FA-**
20 **CILITIES.**

21 “(a) COMMISSION AUTHORITY.—Upon the applica-
22 tion of an electric utility or transmitting utility, if the
23 Commission determines, after notice and opportunity for
24 hearing, that such action is in the public interest, it may
25 issue an order requiring a transmitting utility (other than

1 a transmitting utility exempted under section 205(g)(3))
2 to enlarge, extend, or improve its facilities for the trans-
3 mission of electric energy in interstate commerce. The
4 transmitting utility ordered to enlarge, extend, or improve
5 its facilities may apply to the Commission for an order
6 terminating or modifying the order if the transmitting
7 utility demonstrates, and the Commission determines, that
8 the transmitting utility has failed, after making a good
9 faith effort, to obtain the necessary approvals or property
10 rights under applicable Federal, State, and local laws.

11 “(b) COMPLIANCE WITH OTHER LAWS.—Commis-
12 sion action under this section shall be subject to the Na-
13 tional Environmental Policy Act of 1969 (42 U.S.C. 4321
14 and following) and all other applicable State and Federal
15 laws. This section does not affect the authority of States
16 or political subdivisions of States to site transmission fa-
17 cilities under applicable State and local laws.

18 “(c) USE OF JOINT BOARDS.—Before issuing an
19 order under subsection (a), the Commission shall refer the
20 matter to a joint board for advice and recommendations
21 on the need for, design of, and location of the proposed
22 enlargement, extension, or improvement. The Commission
23 shall consider the advice and recommendations of such
24 board before ordering any such enlargement, extension, or
25 improvement. Any such board shall be composed of a

1 member or members, as determined by the Commission,
2 from the State or each of the States affected or to be af-
3 fected by such matter, from each Federal agency affected
4 or to be affected by such matter, and from the Commis-
5 sion. Any such board shall be vested with the same power
6 and be subject to the same duties and liabilities as in the
7 case of a member of the Commission when designated to
8 hold any hearings. The action of such board shall have
9 such force and effect and its proceedings shall be con-
10 ducted in such manner as the Commission shall by regula-
11 tions provide. The State member or members of such
12 board shall be appointed by the Commission from persons
13 nominated by the State commission of each State affected,
14 or by the Governor of such State if there is no State com-
15 mission. Each State affected shall be entitled to the same
16 number of representatives on the board unless the nomi-
17 nating power of such State waives such right. The Com-
18 mission shall have the discretion to reject the nominee
19 from any State, but shall thereupon invite a new nomina-
20 tion from that State. The Federal member or members
21 from agencies other than the Commission shall be ap-
22 pointed by the Commission in consultation with the head
23 of such agency or agencies. The Commission member or
24 members of such board shall be appointed by the chair-
25 man, in consultation with the Commission. The Commis-

1 sion may, when in its discretion sufficient reason exists
2 therefor, terminate such a board.

3 “(d) LIMITATION ON AUTHORITY.—The Commission
4 shall have no authority to compel a transmitting utility
5 to extend or improve its transmission facilities if such en-
6 largement, extension, or improvement would unreasonably
7 impair the ability of the transmitting utility to provide
8 adequate service to its customers.”.

9 (b) STANDARDS FOR ESTABLISHING RATES,
10 CHARGES, TERMS, AND CONDITIONS FOR TRANSMISSION
11 SERVICE.—Part II of the Federal Power Act is amended
12 by adding at the end thereof the following new section:
13 **“SEC. 217. STANDARDS FOR ESTABLISHING RATES,**
14 **CHARGES, TERMS, AND CONDITIONS FOR**
15 **TRANSMISSION SERVICE.**

16 “(a) RECOVERY OF COSTS.—In reviewing rates,
17 charges, terms, and conditions for transmission services
18 under this Act, the Commission shall permit a transmit-
19 ting utility to recover the costs incurred by the utility in
20 connection with the transmission services and necessary
21 associated services, including, but not limited to, the costs
22 of any enlargement of transmission facilities.

23 “(b) CONSIDERATION OF COST AND BENEFIT.—In
24 reviewing the rates, charges, terms, and conditions of
25 transmission services that are provided by a regional

1 transmission organization and that make use of facilities
2 constructed after the date of enactment of this section,
3 the Commission shall take into account the incremental
4 cost and the benefit to interconnected transmission sys-
5 tems of such facilities.

6 “(c) CERTAIN REQUIREMENTS.—Rates, charges,
7 terms and conditions established pursuant to subsections
8 (a) and (b) shall—

9 “(1) be just and reasonable and not unduly dis-
10 criminatory or preferential; and

11 “(2) promote the economically efficient trans-
12 mission of electricity, the expansion of transmission
13 networks, the introduction of new transmission tech-
14 nologies, and the provision of transmission services
15 by regional transmission organizations.

16 “(d) VOLUNTARY INNOVATIVE PRICING POLICIES.—
17 Notwithstanding subsection (a) of this section, the Com-
18 mission shall encourage innovative pricing policies volun-
19 tarily filed by transmitting utilities. Innovative pricing
20 policies include policies that—

21 “(1) provide incentives to transmitting utilities
22 to promote the voluntary participation in and forma-
23 tion of regional transmission organizations, without
24 having the effect of forcing transmitting utilities to
25 join regional transmission organizations and extend

1 such incentives to transmitting utilities that already
2 have formed a regional transmission organization;

3 “(2) limit the charging of multiple rates for
4 transmission service over the transmission facilities
5 operated by the regional transmission organization,
6 provided, however, that a reasonable transition
7 mechanism or period may be used before eliminating
8 such rates;

9 “(3) minimize the shifting of costs among exist-
10 ing customers of the transmitting utilities within the
11 regional transmission organization;

12 “(4) encourage the efficient and reliable oper-
13 ation of the transmission grid and supply of trans-
14 mission services through congestion management,
15 performance-based or incentive ratemaking, and
16 other measures; and

17 “(5) encourage efficient and adequate invest-
18 ment in and expansion of the transmission facilities
19 owned or controlled by the regional transmission or-
20 ganization.

21 “(e) NEGOTIATED RATES.—Notwithstanding sub-
22 section (a) of this section, the Commission may permit the
23 charging of negotiated rates for transmission services
24 without regard to costs whenever an individual company
25 or companies are willing to pay such negotiated rates, pro-

1 vided, however, that such costs shall not be recovered from
2 other transmission customers.

3 “(f) EFFECTIVE COMPETITION.—Notwithstanding
4 subsection (a) of this section, in reviewing rates, charges,
5 terms, and conditions for transmission rates under this
6 Act, the Commission may permit the recovery of market-
7 based rates for transmission services where it finds that
8 relevant geographic and product markets for transmission
9 services or for delivered wholesale power are subject to ef-
10 fective competition.

11 “(g) RULEMAKING.—Within 180 days after enact-
12 ment of this section, the Commission shall establish by
13 rule definitions and standards to govern its approval of
14 performance-based or incentive pricing policies under sub-
15 section (d) and negotiated rates under subsection (e).
16 With respect to performance-based or incentive rates, the
17 definitions and standards shall include, but not be limited
18 to, (1) a method for calculating initial transmission rates
19 (including price caps that would include discounting); (2)
20 an index mechanism for adjusting initial rates; (3) time
21 periods for redetermining initial rates; and (4) costs to
22 be excluded from performance-based rates.

23 “(h) REPORT.—Within 360 days after enactment of
24 the section, the Commission shall submit to Congress a
25 report on all policies adopted by the Commission to en-

1 courage the economic use and expansion of the trans-
2 mission network through incentive rates or other similar
3 market-oriented approaches.

4 “(i) ANNUAL REPORTS.—The Commission shall sub-
5 mit annually a report to the Congress comparing the al-
6 lowed financial returns on transmission related investment
7 by electric utilities to the financial returns earned by a
8 sample of United States companies from other industrial
9 sectors.”.

10 **SEC. 106. CONFORMING AMENDMENTS.**

11 (a) ENFORCEMENT.—Subsections (a) and (b) of sec-
12 tion 316A of the Federal Power Act (16 U.S.C. 791a) are
13 each amended by striking “section 211, 212, 213, or
14 214,” in each place such phrase appears and inserting
15 “part II”.

16 (b) COMPLAINTS.—Section 306 of the Federal Power
17 Act is amended by inserting “agency or instrumentality
18 of the United States,” after “person,” in the first sentence
19 and by inserting “, electric utility, transmitting utility”
20 after “licensee” in each place it appears.

21 (c) REVIEW OF COMMISSION ORDERS.—Section 313
22 of the Federal Power Act is amended by inserting “agency
23 or instrumentality of the United States,” after “person,”
24 in the first sentence in subsection (a).

1 (d) TECHNICAL CORRECTIONS.—(1) Section 211(c)
2 of the Federal Power Act is amended by striking “(2)”
3 and by redesignating subparagraphs (A) and (B) as para-
4 graphs (1) and (2) and by striking “termination of modi-
5 fication” and inserting “termination or modification”.

6 (2) Section 315 of the Federal Power Act is amended
7 by striking “subsection” and inserting “section”.

8 **SEC. 107. SAVINGS CLAUSE.**

9 (a) STATE AUTHORITY TO ORDER RETAIL AC-
10 CESS.—Neither silence on the part of Congress nor any
11 Act of Congress shall be construed to preclude a State
12 or State commission, acting under authority of State law,
13 from requiring an electric utility subject to its jurisdiction
14 to provide unbundled local distribution service to any elec-
15 tric consumers within such State.

16 (b) EXISTING STATE PROGRAMS.—Nothing in this
17 Act nor any amendment to the Federal Power Act made
18 by this Act preempts, overrides, or requires any change
19 in the terms of any State retail access plan enacted, adopt-
20 ed, approved, promulgated or ordered prior to or within
21 three years after the date of the enactment of this Act
22 to the extent that such plan addresses matters within the
23 jurisdiction of the State prior to the enactment of this Act.

TITLE II—ELECTRIC RELIABILITY

SEC. 201. ELECTRIC RELIABILITY.

Part II of the Federal Power Act (16 U.S.C. 824 and following) is amended by adding at the end the following section:

“SEC. 218. ELECTRIC RELIABILITY ORGANIZATION AND OVERSIGHT.

“(a) DEFINITIONS.—As used in this section:

“(1) AFFILIATED REGIONAL RELIABILITY ENTITY.—The term ‘affiliated regional reliability entity’ means an entity delegated authority under the provisions of subsection (h).

“(2) BULK-POWER SYSTEM.—The term ‘bulk-power system’ means all facilities and control systems necessary for operating an interconnected transmission grid (or any portion thereof), including high-voltage transmission lines, substations, control centers, communications, data, and operations planning facilities, and the output of generating units necessary to maintain transmission system reliability.

“(3) ELECTRIC RELIABILITY ORGANIZATION.—The term ‘electric reliability organization’ means the

1 organization approved by the Commission under
2 subsection (d)(4).

3 “(4) ENTITY RULE.—The term ‘entity rule’
4 means a rule adopted by an affiliated regional reli-
5 ability entity for a specific region and designed to
6 implement or enforce one or more organization
7 standards. An entity rule shall be subject to ap-
8 proval by the electric reliability organization and
9 once approved, shall be treated as an organization
10 standard.

11 “(5) INDUSTRY SECTOR.—The term ‘industry
12 sector’ means a group of users of the bulk-power
13 system with substantially similar commercial inter-
14 ests, as determined by the board of the electric reli-
15 ability organization.

16 “(6) INTERCONNECTION.—The term ‘inter-
17 connection’ means a geographic area in which the
18 operation of bulk-power system components is syn-
19 chronized such that the failure of one or more of
20 such components may adversely affect the ability of
21 the operators of other components within the inter-
22 connection to maintain safe and reliable operation of
23 the facilities within their control.

24 “(7) ORGANIZATION STANDARD.—The term ‘or-
25 ganization standard’ means a policy or standard

1 duly adopted by the electric reliability organization
2 to provide for the reliable operation of a bulk-power
3 system.

4 “(8) PUBLIC INTEREST GROUP.—The term
5 ‘public interest group’ means any nonprofit private
6 or public organization that has an interest in the ac-
7 tivities of the electric reliability organization, includ-
8 ing, but not limited to, ratepayer advocates, environ-
9 mental groups, and State and local government or-
10 ganizations that regulate market participants and
11 promulgate government policy.

12 “(9) SYSTEM OPERATOR.—The term ‘system
13 operator’ means any entity that operates or is re-
14 sponsible for the operation of a bulk-power system,
15 including a control area operator, an independent
16 system operator, a transmission company, a trans-
17 mission system operator, or a regional security coor-
18 dinator.

19 “(10) USER OF THE BULK-POWER SYSTEM.—
20 The term ‘user of the bulk-power system’ means any
21 entity that sells, purchases, or transmits electric en-
22 ergy over a bulk-power system, or that owns, oper-
23 ates or maintains facilities or control systems that
24 are part of a bulk-power system, or that is a system
25 operator.

1 “(11) VARIANCE.—The term ‘variance’ means
2 an exception or variance from the requirements of
3 an organization standard (including a proposal for
4 an organization standard where there is no organiza-
5 tion standard) that is adopted by an affiliated re-
6 gional reliability entity and applicable to all or a
7 part of the region for which the affiliated regional
8 reliability entity is responsible. A variance shall be
9 subject to approval by the electric reliability organi-
10 zation and once approved, shall be treated as an or-
11 ganization standard.

12 “(b) COMMISSION AUTHORITY.—(1) Notwithstanding
13 section 201(f), the Commission shall have jurisdiction
14 within the United States over the electric reliability orga-
15 nization, all affiliated regional reliability entities, all sys-
16 tem operators, and all users of the bulk-power system, for
17 purposes of approving and enforcing compliance with the
18 requirements of this section.

19 “(2) The Commission may, by rule, define any other
20 term used in this section, provided such definition is con-
21 sistent with the definitions in, and the purpose and intent
22 of, this Act.

23 “(c) EXISTING RELIABILITY STANDARDS.—Fol-
24 lowing enactment of this section, and prior to the approval
25 of the electric reliability organization under subsection (d),

1 any person, including the North American Electric Reli-
2 ability Council and its member regional reliability councils,
3 shall file with the Commission any reliability standard,
4 guidance or practice, or any amendment thereto, that the
5 person would propose to be made mandatory and enforce-
6 able. The Commission, after allowing interested persons
7 an opportunity to submit comments, may approve any
8 such proposed mandatory standard, guidance or practice,
9 or any amendment thereto, if it finds that the standard,
10 guidance, or practice, or amendment is just, reasonable,
11 not unduly discriminatory or preferential, and in the pub-
12 lic interest. Filed standards, guidances, or practices, in-
13 cluding any amendments thereto, shall be mandatory and
14 applicable according to their terms following approval by
15 the Commission and shall remain in effect until—

16 (1) withdrawn, disapproved or superseded by an
17 organization standard, issued or approved by the
18 electric reliability organization and made effective by
19 the Commission under subsection (e); or

20 (2) disapproved or suspended by the Commis-
21 sion if, upon complaint or upon its own motion and
22 after notice and opportunity for comment, the Com-
23 mission finds the standard, guidance or practice un-
24 just, unreasonable, unduly discriminatory or pref-
25 erential, or not in the public interest.

1 Standards, guidances or practices in effect pursuant to the
2 provisions of this subsection shall be enforceable by the
3 Commission.

4 “(d) ORGANIZATION APPROVAL.—(1) Not later than
5 90 days after the date of enactment of this section, the
6 Commission shall issue proposed rules specifying proce-
7 dures and requirements for an entity to apply for approval
8 as the electric reliability organization. The Commission
9 shall provide notice and opportunity for comment on the
10 proposed rules. The Commission shall promulgate a final
11 rule under this subsection within 180 days after the date
12 of enactment of this section.

13 “(2) Following the issuance of a final Commission
14 rule under paragraph (1), an entity may submit an appli-
15 cation to the Commission for approval as the electric reli-
16 ability organization. The applicant shall specify in its ap-
17 plication its governance and procedures, as well as its
18 funding mechanism and initial funding requirements.

19 “(3) The Commission shall provide public notice of
20 the application and afford interested parties an oppor-
21 tunity to comment.

22 “(4) The Commission shall approve the application
23 if the Commission determines that the applicant—

1 “(A) has the ability to develop, implement and
2 enforce standards that provide for an adequate level
3 of reliability of the bulk-power system;

4 “(B) permits voluntary membership to any user
5 of the bulk-power system or public interest group;

6 “(C) assures fair representation of its members
7 in the selection of its directors and fair management
8 of its affairs, taking into account the need for effi-
9 ciency and effectiveness in decisionmaking and oper-
10 ations and the requirements for technical com-
11 petency in the development of organization stand-
12 ards and the exercise of oversight of bulk-power sys-
13 tem reliability;

14 “(D) assures that no two industry sectors have
15 the ability to control, and no one industry sector has
16 the ability to veto, the electric reliability organiza-
17 tion’s discharge of its responsibilities (including ac-
18 tions by committees recommending standards to the
19 board or other board actions to implement and en-
20 force standards);

21 “(E) provides for governance by a board wholly
22 comprised of independent directors;

23 “(F) provides a funding mechanism and re-
24 quirements that are just, reasonable and not unduly
25 discriminatory or preferential and are in the public

1 interest, and which satisfy the requirements of sub-
2 section (l);

3 “(G) establishes procedures for development of
4 organization standards that provide reasonable no-
5 tice and opportunity for public comment, taking into
6 account the need for efficiency and effectiveness in
7 decisionmaking and operations and the requirements
8 for technical competency in the development of orga-
9 nization standards, and which standards develop-
10 ment process has the following attributes:

11 “(i) openness,

12 “(ii) balance of interests, and

13 “(iii) due process, except that the proce-
14 dures may include alternative procedures for
15 emergencies;

16 “(H) establishes fair and impartial procedures
17 for implementation and enforcement of organization
18 standards, either directly or through delegation to
19 an affiliated regional reliability entity, including the
20 imposition of penalties, limitations on activities,
21 functions, or operations, or other appropriate sanc-
22 tions;

23 “(I) establishes procedures for notice and op-
24 portunity for public observation of all meetings, ex-
25 cept that the procedures for public observation may

1 include alternative procedures for emergencies or for
2 the discussion of information the directors reason-
3 ably determine should take place in closed session,
4 such as litigation, personnel actions, or commercially
5 sensitive information;

6 “(J) provides for the consideration of rec-
7 ommendations of States and State commissions; and

8 “(K) addresses other matters that the Commis-
9 sion may deem necessary or appropriate to ensure
10 that the procedures, governance, and funding of the
11 electric reliability organization are just, reasonable,
12 not unduly discriminatory or preferential, and are in
13 the public interest.

14 “(5) The Commission shall approve only one electric
15 reliability organization. If the Commission receives two or
16 more timely applications that satisfy the requirements of
17 this subsection, the Commission shall approve only the ap-
18 plication it concludes will best implement the provisions
19 of this section.

20 “(e) ESTABLISHMENT OF AND MODIFICATIONS TO
21 ORGANIZATION STANDARDS.—(1) The electric reliability
22 organization shall file with the Commission any new or
23 modified organization standards, including any variances
24 or entity rules, and the Commission shall follow the proce-
25 dures under paragraph (2) for review of that filing.

1 “(2) Submissions under paragraph (1) shall include:

2 “(A) a concise statement of the purpose of the
3 proposal, and

4 “(B) a record of any proceedings conducted
5 with respect to such proposal.

6 The Commission shall provide notice of the filing of such
7 proposal and afford interested persons 30 days to submit
8 comments. The Commission, after taking into consider-
9 ation any submitted comments, shall approve or dis-
10 approve such proposal not later than 60 days after the
11 deadline for the submission of comments, except that the
12 Commission may extend the 60-day period for an addi-
13 tional 90 days for good cause, and except further that if
14 the Commission does not act to approve or disapprove a
15 proposal within the foregoing periods the proposal shall
16 go into effect subject to its terms, without prejudice to
17 the authority of the Commission thereafter to suspend or
18 modify the proposal in accordance with the standards and
19 requirements of this section. Proposals approved by the
20 Commission shall take effect according to their terms but
21 not earlier than 30 days after the effective date of the
22 Commission’s order, except as provided in paragraph (3)
23 of this subsection.

24 “(3)(A) In the exercise of its review responsibilities
25 under this subsection, the Commission shall give due

1 weight to the technical expertise of the electric reliability
2 organization with respect to the content of a new or modi-
3 fied organization standard, but shall not defer to the orga-
4 nization with respect to the effect of the organization
5 standard on competition. The Commission shall approve
6 a proposed new or modified organization standard if it de-
7 termines the standard to be just, reasonable, not unduly
8 discriminatory or preferential, and in the public interest.
9 The Commission, either upon complaint or upon its own
10 motion, shall suspend an organization standard, if it de-
11 termines the standard to be unjust, unreasonable, unduly
12 discriminatory or preferential or not in the public interest.
13 Upon suspension of such a standard, the Commission shall
14 establish an interim standard to apply until a new or
15 modified standard is approved.

16 “(B) An existing or proposed organization standard
17 which is disapproved or suspended in whole or in part by
18 the Commission shall be remanded to the electric reli-
19 ability organization for further consideration.

20 “(C) The Commission, on its own motion or upon
21 complaint, may direct the electric reliability organization
22 to develop an organization standard, including modifica-
23 tion to an existing organization standard, addressing a
24 specific matter by a date certain if the Commission con-
25 siders such new or modified organization standard nec-

1 essary or appropriate to further the purposes of this sec-
2 tion. The electric reliability organization shall file any such
3 new or modified organization standard in accordance with
4 this subsection.

5 “(D) An affiliated regional reliability entity may pro-
6 pose a variance or entity rule under subsection (h)(3) to
7 the electric reliability organization. The affiliated regional
8 reliability entity may request that the electric reliability
9 organization expedite consideration of the proposal, and
10 shall file a notice of such request with the Commission,
11 if expedited consideration is necessary to provide for bulk-
12 power system reliability. If the electric reliability organiza-
13 tion fails to adopt the variance or entity rule, either in
14 whole or in part, the affiliated regional reliability entity
15 may request that the Commission review such action. If
16 the Commission determines, after its review of such a re-
17 quest, that the action of the electric reliability organiza-
18 tion did not conform to the applicable standards and pro-
19 cedures approved by the Commission, or if the Commis-
20 sion determines that the variance or entity rule is just,
21 reasonable, not unduly discriminatory or preferential, and
22 in the public interest, and that the electric reliability orga-
23 nization has unreasonably rejected the proposed variance
24 or entity rule, then the Commission may remand the pro-
25 posed variance or entity rule for further consideration by

1 the electric reliability organization or may direct the elec-
2 tric reliability organization or the affiliated regional reli-
3 ability entity to develop a variance or entity rule consistent
4 with that requested by the affiliated regional reliability en-
5 tity. Any such variance or entity rule proposed by an affili-
6 ated regional reliability entity shall be submitted to the
7 electric reliability organization for review and filing with
8 the Commission in accordance with the procedures speci-
9 fied in this subsection.

10 “(E) Notwithstanding any other provision of this sub-
11 section, a proposed organization standard or amendment
12 shall take effect according to its terms if the electric reli-
13 ability organization determines that an emergency exists
14 requiring that such proposed organization standard or
15 amendment take effect without notice or comment. The
16 electric reliability organization shall notify the Commission
17 immediately following such determination and shall file
18 such emergency organization standard or amendment with
19 the Commission not later than five days following such
20 determination and shall include in such filing an expla-
21 nation of the need for such emergency standard. Subse-
22 quently, the Commission shall provide notice of the organi-
23 zation standard or amendment for comment, and shall fol-
24 low the procedures set out in paragraphs (2) and (3) for
25 review of the new or modified organization standard. Any

1 such emergency organization standard that has gone into
2 effect shall remain in effect unless and until suspended
3 or disapproved by the Commission. If the Commission de-
4 termines at any time that the emergency organization
5 standard or amendment is not necessary, the Commission
6 may suspend such emergency organization standard or
7 amendment.

8 “(4) All users of the bulk-power system shall comply
9 with any organization standard that takes effect under
10 this section.

11 “(f) COORDINATION WITH CANADA AND MEXICO.—
12 The electric reliability organization shall take all appro-
13 priate steps to gain recognition in Canada and Mexico.
14 The United States shall use its best efforts to enter into
15 international agreements with the appropriate govern-
16 ments of Canada and Mexico to provide for effective com-
17 pliance with organization standards and to provide for the
18 effectiveness of the electric reliability organization in car-
19 rying out its mission and responsibilities. All actions taken
20 by the electric reliability organization, any affiliated re-
21 gional reliability entity, and the Commission shall be con-
22 sistent with the provisions of such international agree-
23 ments.

24 “(g) CHANGES IN PROCEDURES, GOVERNANCE, OR
25 FUNDING.—(1) The electric reliability organization shall

1 file with the Commission any proposed change in its proce-
2 dures, governance, or funding, or any changes in the affili-
3 ated regional reliability entity's procedures, governance or
4 funding relating to delegated functions, and shall include
5 with the filing an explanation of the basis and purpose
6 for the change.

7 “(2) A proposed procedural change shall take effect
8 90 days after filing with the Commission if the change
9 constitutes a statement of policy, practice, or interpreta-
10 tion with respect to the meaning or enforcement of an ex-
11 isting procedure. Any other proposed procedural change
12 shall take effect only upon a finding by the Commission,
13 after notice and opportunity for comments, that the
14 change is just, reasonable, not unduly discriminatory or
15 preferential, is in the public interest, and satisfies the re-
16 quirements of subsection (d)(4).

17 “(3) A proposed change in governance or funding
18 shall not take effect unless the Commission finds that the
19 change is just, reasonable, not unduly discriminatory or
20 preferential, and is in the public interest, and satisfies the
21 requirements of subsection (d)(4).

22 “(4)(A) The Commission, either upon complaint or
23 upon its own motion, may suspend a procedure or govern-
24 ance or funding provision if it determines the procedure
25 or provision does not meet the requirements of subsection

1 (d)(4) or is unjust, unreasonable, unduly discriminatory
2 or preferential, or otherwise not in the public interest.
3 Upon such suspension the Commission shall establish an
4 interim procedure or governance or funding provision until
5 a new or modified procedure or governance or funding pro-
6 vision meeting the requirements of this subsection takes
7 effect.

8 “(B) The Commission, upon complaint or upon its
9 own motion, may require the electric reliability organiza-
10 tion to amend the procedures, governance or funding if
11 the Commission determines that the amendment is nec-
12 essary to meet the requirements of this section. The elec-
13 tric reliability organization shall file the amendment in ac-
14 cordance with paragraph (1) of this subsection.

15 “(h) DELEGATIONS OF AUTHORITY.—(1) The elec-
16 tric reliability organization shall, upon request by an enti-
17 ty, enter into an agreement with such entity for the dele-
18 gation of authority to implement and enforce compliance
19 with organization standards in a specified geographic area
20 if the electric reliability organization finds that the entity
21 requesting the delegation satisfies the requirements of
22 subsection (d)(4) (A), (B), (C), (D), (F), and (K), and
23 if the delegation promotes the effective and efficient imple-
24 mentation and administration of bulk-power system reli-
25 ability. The electric reliability organization may enter into

1 an agreement to delegate to the entity any other authority,
2 except that the electric reliability organization shall re-
3 serve the right to set and approve organization standards
4 for bulk-power system reliability. For purposes of this sub-
5 section, the New York State Reliability Council shall be
6 deemed to satisfy the requirements of this paragraph.

7 “(2) The electric reliability organization shall file
8 with the Commission any agreement entered into under
9 this subsection and any information the Commission re-
10 quires with respect to the affiliated regional reliability en-
11 tity to which authority is to be delegated. The Commission
12 shall approve the agreement, following public notice and
13 opportunity for comment, if it finds that the agreement
14 meets the requirements of paragraph (1), and is just, rea-
15 sonable, not unduly discriminatory or preferential, and is
16 in the public interest. A proposed delegation agreement
17 with an affiliated regional reliability entity organized on
18 an interconnection-wide basis shall be rebuttably pre-
19 sumed by the Commission to promote the effective and
20 efficient implementation and administration of bulk-power
21 system reliability. No delegation by the electric reliability
22 organization shall be valid unless approved by the Com-
23 mission.

24 “(3)(A) A delegation agreement entered into under
25 this subsection shall specify the procedures for an affili-

1 ated regional reliability entity to propose entity rules or
2 variances for review by the electric reliability organization.
3 With respect to any such proposal that would apply on
4 an interconnection-wide basis, the electric reliability orga-
5 nization shall presume such proposal valid if made by an
6 interconnection-wide affiliated regional reliability entity
7 unless the electric reliability organization makes a written
8 finding that the proposal—

9 “(i) was not developed in a fair and open proc-
10 ess that provided an opportunity for all interested
11 parties to participate;

12 “(ii) has a significant adverse impact on reli-
13 ability or interstate commerce in other interconnec-
14 tions;

15 “(iii) fails to provide a level of bulk-power sys-
16 tem reliability within the interconnection such that
17 it would constitute a serious and substantial threat
18 to public health, safety, welfare, or national security;
19 or

20 “(iv) creates a serious and substantial burden
21 on competitive markets within the interconnection
22 that is not necessary for reliability.

23 “(B) With respect to any such proposal that would
24 apply only to part of an interconnection, the electric reli-
25 ability organization shall find such proposal valid if the

1 affiliated regional reliability entity or entities making the
2 proposal demonstrate that it—

3 “(i) was developed in a fair and open process
4 that provided an opportunity for all interested parties to participate;
5

6 “(ii) would not have an adverse impact on
7 interstate commerce that is not necessary for reliability;
8

9 “(iii) provides a level of bulk-power system reliability adequate to protect public health, safety, welfare, and national security, and would not have a
10 significant adverse impact on reliability; and
11

12 “(iv) in the case of a variance, is based on legitimate differences between regions or between sub-
13 regions within the affiliated regional reliability entity’s geographic area.
14

15 The electric reliability organization shall approve or dis-
16 approve such proposal within 120 days, or the proposal
17 shall be deemed approved. Following approval of any such
18 proposal under this paragraph, the electric reliability organization shall seek Commission approval pursuant to sub-
19 section (e)(3). Affiliated regional reliability entities may
20 not make requests for approval directly to the Commission
21 except pursuant to subsection (e)(3)(D).
22
23
24

1 “(4) If an affiliated regional reliability entity re-
2 quests, consistent with paragraph (1), that the electric re-
3 liability organization delegate authority to it, but is unable
4 within 180 days to reach agreement with the electric reli-
5 ability organization with respect to such requested delega-
6 tion, such entity may seek relief from the Commission. If,
7 following notice and opportunity for comment, the Com-
8 mission determines that a delegation to the entity would
9 meet the requirements of subsection (1) above, and that
10 the delegation would be just, reasonable, not unduly dis-
11 criminatory or preferential, and in the public interest, and
12 that the electric reliability organization has unreasonably
13 withheld such delegation, the Commission may, by order,
14 direct the electric reliability organization to make such del-
15 egation.

16 “(5)(A) The Commission may, upon its own motion
17 or upon complaint, and with notice to the appropriate af-
18 filiated regional reliability entity or entities, direct the
19 electric reliability organization to propose a modification
20 to an agreement entered into under this subsection if the
21 Commission determines that—

22 “(i) the affiliated regional reliability entity no
23 longer has the capacity to carry out effectively or ef-
24 ficiently its implementation or enforcement respon-
25 sibilities under that agreement, has failed to meet its

1 obligations under that agreement, or has violated
2 any provision of this section,

3 “(ii) the rules, practices, or procedures of the
4 affiliated regional reliability entity no longer provide
5 for fair and impartial discharge of its implementa-
6 tion or enforcement responsibilities under the agree-
7 ment,

8 “(iii) the geographic boundary of a regional
9 transmission organization approved by the Commis-
10 sion is not wholly within the boundary of an affili-
11 ated regional reliability entity and such difference is
12 inconsistent with the effective and efficient imple-
13 mentation and administration of bulk-power system
14 reliability, or

15 “(iv) the agreement is inconsistent with another
16 delegation agreement as a result of actions taken
17 under paragraph (4) of this subsection.

18 “(B) Following an order of the Commission issued
19 under subparagraph (A), the Commission may suspend
20 the affected agreement if the electric reliability organiza-
21 tion or the affiliated regional reliability entity does not
22 propose an appropriate and timely modification. If the
23 agreement is suspended, the electric reliability organiza-
24 tion shall assume the previously delegated responsibilities.
25 The Commission shall allow the electric reliability organi-

1 zation and the affiliated regional reliability entity an op-
2 portunity to appeal the suspension. Any such appeal shall
3 not stay the suspension unless directed by the Commission
4 or a reviewing court.

5 “(i) ORGANIZATION MEMBERSHIP.—Every system
6 operator shall be required to be a member of the electric
7 reliability organization and shall be required also to be a
8 member of any affiliated regional reliability entity oper-
9 ating under an agreement effective pursuant to subsection
10 (h) applicable to the region in which the system operator
11 operates or is responsible for operation of bulk-power sys-
12 tem facilities.

13 “(j) INJUNCTIONS AND DISCIPLINARY ACTION.—(1)
14 Consistent with the range of actions approved by the Com-
15 mission under subsection (d)(4)(H), the electric reliability
16 organization may impose a penalty, limit activities, func-
17 tions, or operations, or take such other disciplinary actions
18 the electric reliability organization finds appropriate
19 against a user of the bulk-power system if the electric reli-
20 ability organization, after notice and opportunity for inter-
21 ested parties to be heard, issues a finding in writing that
22 the user of the bulk-power system has violated an organi-
23 zation standard approved by the Commission. The electric
24 reliability organization shall immediately notify the Com-
25 mission of any disciplinary action imposed with respect to

1 an act or failure to act of a user of the bulk-power system
2 that affected or threatened to affect bulk-power system fa-
3 cilities located in the United States. The sanctioned party
4 shall have the right to seek suspension, modification, or
5 rescission of such disciplinary action by the Commission.
6 If the electric reliability organization finds it necessary to
7 prevent a serious threat to reliability, the organization
8 may seek injunctive relief in the United States district
9 court for the district in which the affected facilities are
10 located.

11 “(2) A disciplinary action taken under paragraph (1)
12 may take effect no earlier than 30 days after the electric
13 reliability organization files with the Commission its writ-
14 ten finding and record of proceedings before the electric
15 reliability organization and the Commission posts the or-
16 ganization’s written finding, unless the Commission, on its
17 own motion or upon petition by the user of the bulk-power
18 system which is the subject of the action, suspends the
19 action. The action shall remain in effect or remain sus-
20 pended until the Commission, after notice and opportunity
21 for hearing, affirms, sets aside, modifies, or reinstates the
22 action, but the Commission shall conduct such hearing
23 under procedures established to ensure expedited consider-
24 ation of the action taken.

1 “(3) The Commission, on its own motion or upon
2 complaint of any person, may order compliance with an
3 organization standard and may impose a penalty, limit ac-
4 tivities, functions, or operations, or take such other dis-
5 ciplinary action as the Commission finds appropriate,
6 against a user of the bulk-power system with respect to
7 actions affecting or threatening to affect bulk-power sys-
8 tem facilities located in the United States if the Commis-
9 sion finds, after notice and opportunity for a hearing, that
10 the user of the bulk-power system has violated or threat-
11 ens to violate an organization standard.

12 “(4) The Commission may take such action as is nec-
13 essary against the electric reliability organization or an af-
14 filiated regional reliability entity to assure compliance with
15 an organization standard, or any Commission order affect-
16 ing the electric reliability organization or an affiliated re-
17 gional reliability entity.

18 “(k) RELIABILITY REPORTS.—The electric reliability
19 organization shall conduct periodic assessments of the reli-
20 ability and adequacy of the interconnected bulk-power sys-
21 tem in North America and shall report annually to the
22 Secretary of Energy and the Commission its findings and
23 recommendations for monitoring or improving system reli-
24 ability and adequacy.

1 “(l) ASSESSMENT AND RECOVERY OF CERTAIN
2 COSTS.—The reasonable costs of the electric reliability or-
3 ganization, and the reasonable costs of each affiliated re-
4 gional reliability entity that are related to implementation
5 and enforcement of organization standards or other re-
6 quirements contained in a delegation agreement approved
7 under subsection (h), shall be assessed by the electric reli-
8 ability organization and each affiliated regional reliability
9 entity, respectively, taking into account the relationship of
10 costs to each region and based on an allocation that re-
11 flects an equitable sharing of the costs among all end-
12 users. The Commission shall provide by rule for the review
13 of such costs and allocations, pursuant to the standards
14 in this subsection and subsection (d)(4)(F).

15 “(m) APPLICATION OF ANTITRUST LAWS.—

16 “(1) IN GENERAL.—To the extent undertaken
17 to develop, or implement, or enforce an organization
18 standard, each of the following activities shall not, in
19 any action under the antitrust laws, be deemed ille-
20 gal per se:

21 “(A) Activities undertaken by the electric
22 reliability organization under this section or af-
23 filiated regional reliability entity operating
24 under an agreement in effect under subsection
25 (h).

1 “(B) Activities of a member of the electric
2 reliability organization or affiliated regional re-
3 liability entity in pursuit of organization objec-
4 tives under this section undertaken in good
5 faith under the rules of the organization.

6 Primary jurisdiction, and immunities and other af-
7 firmative defenses, shall be available to the extent
8 otherwise applicable.

9 “(2) RULE OF REASON.—In any action under
10 the antitrust laws, an activity described in para-
11 graph (1) shall be judged on the basis of its reason-
12 ableness, taking into account all relevant factors af-
13 fecting competition and reliability.

14 “(3) DEFINITION.—For purposes of this sub-
15 section, the term ‘antitrust laws’ has the meaning
16 given such term in subsection (a) of the first section
17 of the Clayton Act (15 U.S.C. 12(a)), except that
18 such term includes section 5 of the Federal Trade
19 Commission Act (15 U.S.C. 45) to the extent that
20 such section 5 applies to unfair methods of competi-
21 tion.

22 “(n) SAVINGS CLAUSE.—Nothing in this section shall
23 be construed to preempt the authority of a State or a po-
24 litical subdivision of a State to ensure the reliability of
25 local distribution facilities within the State except where

1 the exercise of such authority unreasonably impairs the
2 reliability of the bulk-power system.

3 “(o) REGIONAL ADVISORY BODIES.—The Commis-
4 sion shall establish a regional advisory body on the petition
5 of two-thirds of the Governors of a region. A regional advi-
6 sory body shall be composed of one member from each
7 participating State in the region, appointed by the Gov-
8 ernor of each State, and may include representatives of
9 agencies, States, and provinces outside the United States,
10 upon execution of an international agreement or agree-
11 ments described in subsection (f). A regional advisory body
12 may provide recommendations to the electric reliability or-
13 ganization, an affiliated regional reliability entity, or the
14 Commission regarding the governance of an existing or
15 proposed affiliated regional reliability entity within the
16 same region, whether an organization standard, entity
17 rule, or variance proposed to apply within the region is
18 just, reasonable, not unduly discriminatory or preferential,
19 and in the public interest, and whether fees proposed to
20 be assessed within the region are just, reasonable, not un-
21 duly discriminatory or preferential, in the public interest,
22 and consistent with the requirements of subsection (l).
23 The Commission may give deference to the recommenda-
24 tions of any such regional advisory body if that body is
25 organized on an interconnection-wide basis.”.

1 **TITLE III—CONSUMER**
2 **PROTECTION**

3 **SEC. 301. ELECTRIC SUPPLIER INFORMATION DISCLOSURE.**

4 (a) DISCLOSURE RULES.—Not later than January 1,
5 2001, the Federal Trade Commission shall promulgate
6 rules prescribing the form, placement, content, and timing
7 of the disclosure required under subsections (b) and (c)
8 of this section. Such rules shall be promulgated in accord-
9 ance with section 553 of title 5 of the United States Code,
10 after consultation with the Federal Energy Regulatory
11 Commission, the Secretary of Energy, and the Adminis-
12 trator of the Environmental Protection Agency.

13 (b) DISCLOSURE TO RETAIL ELECTRIC CON-
14 SUMERS.—In order to assist retail electric consumers in
15 making informed purchasing decisions, any retail electric
16 supplier that sells or makes an offer to sell electric energy,
17 or solicits retail electric consumers to purchase electric en-
18 ergy, shall provide the retail electric consumers, in accord-
19 ance with rules promulgated under subsection (a), a state-
20 ment containing the following information:

21 (1)(A) The nature of the service being offered,
22 including information about interruptibility of serv-
23 ice.

24 (B) The price of electric energy, including a de-
25 scription of any variable charges.

1 (C) A description of all other charges that are
2 associated with the service being offered including,
3 but not limited to, access charges, exit charges,
4 back-up service charges, stranded cost recovery
5 charges, and customer service charges.

6 (D) Information concerning the product or
7 price that the Federal Trade Commission determines
8 is technologically and economically feasible to pro-
9 vide and is of assistance to retail electric consumers
10 in making purchasing decisions.

11 (2) Information concerning the share of electric
12 energy that is generated by each type of electric gen-
13 eration resource and generation emissions character-
14 istics that the Federal Trade Commission deter-
15 mines is technologically and economically feasible to
16 provide and is of assistance to retail electric con-
17 sumers in making purchasing decisions.

18 (c) DISCLOSURE TO WHOLESALE PURCHASERS.—In
19 every sale of electric energy for resale, the seller shall pro-
20 vide to the purchaser such information respecting genera-
21 tion source and emissions characteristics as may be re-
22 quired by rules under subsection (a).

23 (d) FEDERAL TRADE COMMISSION ENFORCE-
24 MENT.—Violation of a rule promulgated under this section
25 shall be treated as a violation of a rule under section 18

1 of the Federal Trade Commission Act (15 U.S.C. 57a).
2 All functions and powers of the Federal Trade Commis-
3 sion under such Act are available to the Federal Trade
4 Commission to enforce compliance with this section not-
5 withstanding any jurisdictional limitations in such Act.

6 (e) STATE AUTHORITY.—(1) This section does not
7 preclude a State or State commission from prescribing and
8 enforcing additional laws, regulations, or procedures re-
9 garding the practices which are the subject of this section,
10 so long as such laws, regulations, or procedures are not
11 inconsistent with the provisions of this section or with any
12 rule prescribed by the Federal Trade Commission pursu-
13 ant to it.

14 (2) The remedies provided by this section are in addi-
15 tion to any other remedies available by law.

16 **SEC. 302. CONSUMER PRIVACY.**

17 (a) PROHIBITION.—The Federal Trade Commission
18 shall promulgate rules prohibiting any person who obtains
19 consumer information in connection with the sale or deliv-
20 ery of electric energy to a retail electric consumer from
21 using, disclosing, or permitting access to such information
22 unless the consumer to whom such information relates
23 provides prior written approval. Such rules shall be pro-
24 mulgated in accordance with section 553 of title 5 of the
25 United States Code.

1 (b) PERMITTED USE.—The rules under subsection
2 (a) shall not prohibit any person from using, disclosing,
3 or permitting access to consumer information referred to
4 in subsection (a) for any of the following purposes:

5 (1) To facilitate a retail electric consumer's
6 change in selection of a retail electric supplier under
7 procedures approved by the State or State commis-
8 sion.

9 (2) To initiate, render, bill, or collect for the
10 sale or delivery of electric energy to retail electric
11 consumers or for related services.

12 (3) To protect the rights or property of the per-
13 son obtaining such information.

14 (4) To protect retail electric consumers from
15 fraud, abuse, and unlawful subscription in the sale
16 or delivery of electric energy to such consumers.

17 (5) For law enforcement purposes.

18 (6) For purposes of compliance with any Fed-
19 eral, State, or local law or regulation authorizing
20 disclosure of information to a Federal, State, or
21 local agency.

22 (c) AGGREGATE CONSUMER INFORMATION.—The
23 rules under subsection (a) shall permit any person to use,
24 disclose, and permit access to aggregate consumer infor-
25 mation and shall require local distribution companies to

1 make such information available to retail electric suppliers
2 upon request and payment of a reasonable fee.

3 (d) FEDERAL TRADE COMMISSION ENFORCE-
4 MENT.—Violation of a rule promulgated under this section
5 shall be treated as a violation of a rule under section 18
6 of the Federal Trade Commission Act (15 U.S.C. 57a).
7 All functions and powers of the Federal Trade Commis-
8 sion under such Act are available to the Federal Trade
9 Commission to enforce compliance with this section not-
10 withstanding any jurisdictional limitations in such Act.

11 (e) STATE AUTHORITY.—(1) This section does not
12 preclude a State or State commission from prescribing and
13 enforcing additional laws, regulations, or procedures re-
14 garding the practices which are the subject of this section,
15 so long as such laws, regulations, or procedures are not
16 inconsistent with the provisions of this section or with any
17 rule prescribed by the Federal Trade Commission pursu-
18 ant to it.

19 (2) The remedies provided by this section are in addi-
20 tion to any other remedies available by law.

21 (f) DEFINITIONS.—As used in this section:

22 (1) AGGREGATE CONSUMER INFORMATION.—
23 The term “aggregate consumer information” means
24 collective data that relates to a group or category of
25 retail electric consumers, from which individual con-

1 sumer identities and characteristics have been re-
2 moved.

3 (2) CONSUMER INFORMATION.—The term “con-
4 sumer information” means information that relates
5 to the quantity, technical configuration, type, des-
6 tination, or amount of use of electric energy deliv-
7 ered to any retail electric consumer.

8 **SEC. 303. ELECTRIC SUPPLY UNFAIR TRADE PRACTICES.**

9 (a) SLAMMING.—(1) The Federal Trade Commission
10 shall promulgate rules in accordance with section 553 of
11 title 5 of the United States Code for the submittal and
12 verification of a retail electric consumer’s selection or
13 change in selection of a retail electric supplier and for the
14 assessment of penalties for violation of these rules.

15 (2) A person shall not submit or change the selection
16 made by a retail electric consumer except in accordance
17 with procedures established in paragraph (1).

18 (b) CRAMMING.—(1) The Federal Trade Commission
19 shall promulgate rules in accordance with section 553 of
20 title 5 of the United States Code for obtaining the consent
21 of a retail electric consumer for purchase of goods and
22 services other than those expressly authorized by law or
23 any agreement for the purchase of electric energy or re-
24 lated services entered into by the electric consumer and
25 for the assessment of penalties for violation of these rules.

1 (2) A person shall not charge a retail electric con-
2 sumer for a particular good or service except in accordance
3 with procedures established in paragraph (1).

4 (c) FEDERAL TRADE COMMISSION ENFORCEMENT.—
5 Violation of a rule promulgated under this section shall
6 be treated as a violation of a rule under section 18 of the
7 Federal Trade Commission Act (15 U.S.C. 57a). All func-
8 tions and powers of the Federal Trade Commission under
9 such Act are available to the Federal Trade Commission
10 to enforce compliance with this section notwithstanding
11 any jurisdictional limitations in such Act.

12 (d) STATE AUTHORITY.—(1) This section does not
13 preclude a State or State commission from prescribing and
14 enforcing additional laws, regulations, or procedures re-
15 garding the practices which are the subject of this section,
16 so long as such laws, regulations, or procedures are not
17 inconsistent with the provisions of this section or with any
18 rule prescribed by the Federal Trade Commission pursu-
19 ant to it.

20 (2) The remedies provided by this section are in addi-
21 tion to any other remedies available by law.

22 **SEC. 304. UNIVERSAL AND AFFORDABLE SERVICE.**

23 It is the sense of the Congress that—

1 (1) every retail electric consumer should have
2 access to electric energy at reasonable and afford-
3 able rates; and

4 (2) the States should ensure that retail electric
5 competition does not result in the loss of service to
6 rural, residential, or low-income consumers.

7 **SEC. 305. DEFINITIONS.**

8 For purposes of this title, each of the terms “local
9 distribution company”, “retail electric consumer”, “retail
10 electric supplier”, and “State commission” has the mean-
11 ing given such term in section 3 of the Federal Power Act.

12 **TITLE IV—MERGERS**

13 **SEC. 401. ELECTRIC COMPANY MERGERS AND DISPOSITION**
14 **OF PROPERTY.**

15 Section 203(a) of the Federal Power Act (16 U.S.C.
16 824b(a) is amended—

17 (1) by inserting “(1)” after “(a)”;

18 (2) in paragraph (1) (as so designated)—

19 (A) by striking “authorizing it to do so.”
20 and inserting the following: “authorizing it to
21 do so, unless the period specified in paragraph
22 (2) has expired.”; and

23 (B) by striking “After notice” and all that
24 follows; and

25 (3) by adding at the end the following:

“(2) After notice and opportunity for hearing, if the Commission finds that the proposed disposition, consolidation, acquisition, or control will be consistent with the public interest, it shall approve the same within 180 days after the date on which the application was filed with the Commission.”.

7 SEC. 402. ELIMINATION OF REVIEW BY THE NUCLEAR REG-
8 ULATORY COMMISSION.

9 Section 105 of the Atomic Energy Act of 1954 (42
10 U.S.C. 2135) is amended by adding the following after
11 subsection c.:

12 “d. Following the date of enactment of this sub-
13 section, subsection 105 c. shall not apply to any pending
14 or future application filed for a license to construct or op-
15 erate a utilization or production facility under sections
16 103 or 104 b. This subsection shall not affect the Commis-
17 sion’s authority to enforce conditions included in licenses
18 issued under section/“(C 103 or 104 b. before the date
19 of enactment of this subsection.”.

20 SEC. 403. ANTITRUST SAVINGS CLAUSE.

21 This Act and the amendments made by this Act shall
22 not be construed to affect the operation of the antitrust
23 laws. For purposes of this section, the term “antitrust
24 laws” has the meaning given such term in subsection (a)
25 of the first section of the Clayton Act (15 U.S.C. 12(a)),

1 except that such term includes section 5 of the Federal
2 Trade Commission Act (15 U.S.C. 45) to the extent that
3 such section 5 applies to unfair methods of competition.

4 **TITLE V—PROMOTING**
5 **COMPETITION**
6 **Subtitle A—Public Utility Holding**
7 **Company Act of 1935**

8 **SEC. 501. DEFINITIONS.**

9 For purposes of this subtitle:

10 (1) The term “affiliate” of a company means
11 any company 5 percent or more of the outstanding
12 voting securities of which are owned, controlled, or
13 held with power to vote, directly or indirectly, by
14 such company.

15 (2) The term “associate company” of a com-
16 pany means any company in the same holding com-
17 pany system with such company.

18 (3) The term “Commission” means the Federal
19 Energy Regulatory Commission.

20 (4) The term “company” means a corporation,
21 partnership, association, joint stock company, busi-
22 ness trust, or any organized group of persons,
23 whether incorporated or not, or a receiver, trustee,
24 or other liquidating agent of any of the foregoing.

1 (5) The term “electric utility company” means
2 any company that owns or operates facilities used
3 for the generation, transmission, or distribution of
4 electric energy for sale.

5 (6) The terms “exempt wholesale generator”
6 and “foreign utility company” have the same mean-
7 ings as in sections 32 and 33, respectively, of the
8 Public Utility Holding Company Act of 1935, as
9 those sections existed on the day before the effective
10 date of this subtitle.

11 (7) The term “gas utility company” means any
12 company that owns or operates facilities used for
13 distribution at retail (other than the distribution
14 only in enclosed portable containers or distribution
15 to tenants or employees of the company operating
16 such facilities for their own use and not for resale)
17 of natural or manufactured gas for heat, light, or
18 power.

19 (8) The term “holding company” means—

20 (A) any company that directly or indirectly
21 owns, controls, or holds, with power to vote, 10
22 percent or more of the outstanding voting secu-
23 rities of a public utility company or of a holding
24 company of any public utility company; and

1 (B) any person, determined by the Com-
2 mission, after notice and opportunity for hear-
3 ing, to exercise directly or indirectly (either
4 alone or pursuant to an arrangement or under-
5 standing with one or more persons) such a con-
6 trolling influence over the management or poli-
7 cies of any public utility company or holding
8 company as to make it necessary or appropriate
9 for the protection of utility customers with re-
10 spect to rates that such person be subject to the
11 obligations, duties, and liabilities imposed by
12 this subtitle upon holding companies.

13 (9) The term “holding company system” means
14 a holding company, together with its subsidiary com-
15 panies.

16 (10) The term “jurisdictional rates” means
17 rates established by the Commission for the trans-
18 mission of electric energy in interstate commerce,
19 the sale of electric energy at wholesale in interstate
20 commerce, the transportation of natural gas in inter-
21 state commerce, and the sale in interstate commerce
22 of natural gas for resale for ultimate public con-
23 sumption for domestic, commercial, industrial, or
24 any other use.

1 (11) The term “natural gas company” means a
2 person engaged in the transportation of natural gas
3 in interstate commerce or the sale of such gas in
4 interstate commerce for resale.

5 (12) The term “person” means an individual or
6 company.

7 (13) The term “public utility” means any per-
8 son who owns or operates facilities used for trans-
9 mission of electric energy in interstate commerce or
10 sales of electric energy at wholesale in interstate
11 commerce.

12 (14) The term “public utility company” means
13 an electric utility company or a gas utility company.

14 (15) The term “State commission” means any
15 commission, board, agency, or officer, by whatever
16 name designated, of a State, municipality, or other
17 political subdivision of a State that, under the laws
18 of such State, has jurisdiction to regulate public util-
19 ity companies.

20 (16) The term “subsidiary company” of a hold-
21 ing company means—

22 (A) any company, 10 percent or more of
23 the outstanding voting securities of which are
24 directly or indirectly owned, controlled, or held

1 with power to vote, by such holding company;
2 and

3 (B) any person, the management or poli-
4 cies of which the Commission, after notice and
5 opportunity for hearing, determines to be sub-
6 ject to a controlling influence, directly or indi-
7 rectly, by such holding company (either alone or
8 pursuant to an arrangement or understanding
9 with one or more other persons) so as to make
10 it necessary for the protection of utility cus-
11 tomers with respect to rates that such person
12 be subject to the obligations, duties, and liabil-
13 ities imposed by this subtitle upon subsidiary
14 companies of holding companies.

15 (17) The term “voting security” means any se-
16 curity presently entitling the owner or holder thereof
17 to vote in the direction or management of the affairs
18 of a company.

19 **SEC. 502. REPEAL OF THE PUBLIC UTILITY HOLDING COM-**
20 **PANY ACT OF 1935.**

21 The Public Utility Holding Company Act of 1935 (15
22 U.S.C. 79a and following) is repealed, effective 12 months
23 after the date of enactment of this Act.

1 **SEC. 503. FEDERAL ACCESS TO BOOKS AND RECORDS.**

2 (a) IN GENERAL.—Each holding company and each
3 associate company thereof shall maintain, and shall make
4 available to the Commission, such books, accounts, memo-
5 randa, and other records as the Commission determines
6 are necessary to identify costs incurred by a public utility
7 or natural gas company that is an associate company of
8 such holding company and necessary or appropriate for
9 the protection of utility customers with respect to jurisdic-
10 tional rates.

11 (b) AFFILIATE COMPANIES.—Each affiliate of a hold-
12 ing company or of any subsidiary company of a holding
13 company shall maintain, and make available to the Com-
14 mission, such books, accounts, memoranda, and other
15 records with respect to any transaction with another affil-
16 iate, as the Commission determines are necessary to iden-
17 tify costs incurred by a public utility or natural gas com-
18 pany that is an associate company of such holding com-
19 pany and necessary or appropriate for the protection of
20 utility customers with respect to jurisdictional rates.

21 (c) HOLDING COMPANY SYSTEMS.—The Commission
22 may examine the books, accounts, memoranda, and other
23 records of any company in a holding company system, or
24 any affiliate thereof, as the Commission determines are
25 necessary to identify costs incurred by a public utility or
26 natural gas company within such holding company system

1 and necessary or appropriate for the protection of utility
2 customers with respect to jurisdictional rates.

3 (d) CONFIDENTIALITY.—No member, officer, or em-
4 ployee of the Commission shall divulge any fact or infor-
5 mation that may come to his or her knowledge during the
6 course of examination of books, accounts, memoranda, or
7 other records as provided in this section, except as may
8 be directed by the Commission or by a court of competent
9 jurisdiction.

10 **SEC. 504. STATE ACCESS TO BOOKS AND RECORDS.**

11 (a) IN GENERAL.—Upon the written request of a
12 State commission having jurisdiction to regulate a public
13 utility company in a holding company system, and subject
14 to such terms and conditions as may be necessary and ap-
15 propriate to safeguard against unwarranted disclosure to
16 the public of any trade secrets or sensitive commercial in-
17 formation, a holding company or its associate company or
18 affiliate thereof, wherever located, shall produce for in-
19 spection books, accounts, memoranda, and other records
20 that—

21 (1) have been identified in reasonable detail in
22 a proceeding before the State commission;

23 (2) the State commission determines are nec-
24 essary to identify costs incurred by such public util-
25 ity company; and

1 (3) are necessary for the effective discharge of
2 the responsibilities of the State commission with re-
3 spect to such proceeding.

4 (b) EFFECT ON STATE LAW.—Nothing in this section
5 shall preempt applicable State law concerning the provi-
6 sion of books, accounts, memoranda, or other records, or
7 in any way limit the rights of any State to obtain books,
8 accounts, memoranda, or other records under Federal law,
9 contract, or otherwise.

10 (c) COURT JURISDICTION.—Any United States dis-
11 trict court located in the State in which the State commis-
12 sion referred to in subsection (a) is located shall have ju-
13 risdiction to enforce compliance with this section.

14 **SEC. 505. EXEMPTION AUTHORITY.**

15 (a) RULEMAKING.—Not later than 90 days after the
16 date of enactment of this Act, the Commission shall pro-
17 mulgate a final rule to exempt from the requirements of
18 section 503 any person that is a holding company, solely
19 with respect to one or more—

20 (1) qualifying facilities under the Public Utility
21 Regulatory Policies Act of 1978;

22 (2) exempt wholesale generators; or

23 (3) foreign utility companies.

24 (b) OTHER AUTHORITY.—If, upon application or
25 upon its own motion, the Commission finds that the books,

1 accounts, memoranda, and other records of any person are
2 not relevant to the jurisdictional rates of a public utility
3 company or natural gas company, or if the Commission
4 finds that any class of transactions is not relevant to the
5 jurisdictional rates of a public utility company, the Com-
6 mission shall exempt such person or transaction from the
7 requirements of section 503.

8 **SEC. 506. AFFILIATE TRANSACTIONS.**

9 Nothing in this subtitle shall preclude the Commis-
10 sion or a State commission from exercising its jurisdiction
11 under otherwise applicable law to determine whether a
12 public utility company, public utility, or natural gas com-
13 pany may recover in rates any costs of an activity per-
14 formed by an associate company, or any costs of goods
15 or services acquired by such public utility company, public
16 utility, or natural gas company from an associate com-
17 pany.

18 **SEC. 507. APPLICABILITY.**

19 No provision of this subtitle shall apply to, or be
20 deemed to include—

21 (1) the United States;

22 (2) a State or any political subdivision of a
23 State;

24 (3) any foreign governmental authority not op-
25 erating in the United States;

1 (4) any agency, authority, or instrumentality of
2 any entity referred to in paragraph (1), (2), or (3);
3 or

4 (5) any officer, agent, or employee of any entity
5 referred to in paragraph (1), (2), or (3) acting as
6 such in the course of his or her official duty.

7 **SEC. 508. EFFECT ON OTHER REGULATIONS.**

8 Nothing in this subtitle precludes the Commission or
9 a State commission from exercising its jurisdiction under
10 otherwise applicable law to protect utility customers.

11 **SEC. 509. ENFORCEMENT.**

12 The Commission shall have the same powers as set
13 forth in sections 306 through 317 of the Federal Power
14 Act (16 U.S.C. 825e–825p) to enforce the provisions of
15 this subtitle.

16 **SEC. 510. SAVINGS PROVISIONS.**

17 (a) IN GENERAL.—Nothing in this subtitle prohibits
18 a person from engaging in or continuing to engage in ac-
19 tivities or transactions in which it is legally engaged or
20 authorized to engage on the date of enactment of this Act,
21 if that person continues to comply with the terms of any
22 such authorization, whether by rule or by order.

23 (b) EFFECT ON OTHER COMMISSION AUTHORITY.—
24 Nothing in this subtitle limits the authority of the Com-
25 mission under the Federal Power Act (16 U.S.C. 791a and

1 following) (including section 301 of that Act) or the Nat-
2 ural Gas Act (15 U.S.C. 717 and following) (including sec-
3 tion 8 of that Act).

4 **SEC. 511. IMPLEMENTATION.**

5 Not later than 12 months after the date of enactment
6 of this Act, the Commission shall—

7 (1) promulgate such regulations as may be nec-
8 essary or appropriate to implement this subtitle; and

9 (2) submit to the Congress detailed rec-
10 ommendations on technical and conforming amend-
11 ments to Federal law necessary to carry out this
12 subtitle and the amendments made by this subtitle.

13 **SEC. 512. TRANSFER OF RESOURCES.**

14 All books and records that relate primarily to the
15 functions transferred to the Commission under this sub-
16 title shall be transferred from the Securities and Exchange
17 Commission to the Commission.

18 **SEC. 513. EFFECTIVE DATE.**

19 This subtitle shall take effect 12 months after the
20 date of enactment of this Act.

21 **SEC. 514. CONFORMING AMENDMENT TO THE FEDERAL**
22 **POWER ACT.**

23 Section 318 of the Federal Power Act (16 U.S.C.
24 825q) is repealed.

1 **Subtitle B—Public Utility**
2 **Regulatory Policies Act of 1978**

3 **SEC. 521. PROSPECTIVE REPEAL.**

4 (a) NEW CONTRACTS.—After the date of enactment
5 of this Act, no electric utility shall be required to enter
6 into a new contract or obligation to purchase or to sell
7 electric energy or capacity pursuant to section 210 of the
8 Public Utility Regulatory Policies Act of 1978.

9 (b) EXISTING RIGHTS AND REMEDIES NOT AF-
10 FECTED.—Nothing in this section affects the rights or
11 remedies of any party with respect to the purchase or sale
12 of electric energy or capacity from or to a facility deter-
13 mined to be a qualifying small power production facility
14 or a qualifying cogeneration facility under section 210 of
15 the Public Utility Regulatory Policies Act of 1978 pursu-
16 ant to any contract or obligation to purchase or to sell
17 electric energy or capacity in effect on the date of the en-
18 actment of this Act, including the right to recover the
19 costs of purchasing such electric energy or capacity.

20 (c) INTERPRETATIONS AND ACTIONS TAKEN.—Noth-
21 ing in this subtitle may be deemed or construed as imply-
22 ing congressional ratification of any interpretation of, or
23 any action taken pursuant to, the Public Utility Regu-
24 latory Policies Act of 1978.

1 **SEC. 522. RECOVERY OF COSTS.**

2 In order to assure recovery by electric utilities pur-
3 chasing electric energy or capacity from a qualifying facil-
4 ity pursuant to any legally enforceable obligation entered
5 into or imposed pursuant to section 210 of the Public Util-
6 ity Regulatory Policies Act of 1978 prior to the date of
7 enactment of this Act of all costs associated with such pur-
8 chases, the Federal Energy Regulatory Commission shall
9 promulgate and enforce such regulations as may be re-
10 quired to assure that no utility shall be required directly
11 or indirectly to absorb the costs associated with such pur-
12 chases from a qualifying facility after the date of the en-
13 actment of this Act. Such regulations shall be treated as
14 a rule enforceable under the Federal Power Act (16
15 U.S.C. 791a–825r).

16 **SEC. 523. DEFINITIONS.**

17 For purposes of this subtitle:

18 (1) The term “electric utility” means any per-
19 son, State agency, or Federal agency, which sells
20 electric energy.

21 (2) The term “qualifying small power produc-
22 tion facility” has the same meaning as provided in
23 section 3(17)(C) of the Federal Power Act.

24 (3) The term “qualifying cogeneration facility”
25 has the same meaning as provided in section
26 3(18)(A) of the Federal Power Act.

1 (4) The term “qualifying facility” means either
2 a qualifying small power production facility or a
3 qualifying cogeneration facility.

4 **Subtitle C—Additional Provisions**
5 **Promoting Competition**

6 **SEC. 531. AGGREGATION.**

7 Part II of the Federal Power Act (16 U.S.C. 824 and
8 following) is amended by adding at the end the following
9 section:

10 **“SEC. 219. PURCHASE OF ELECTRIC ENERGY BY RETAIL**
11 **ELECTRIC CONSUMERS.**

12 “Subject to not unduly discriminatory or preferential
13 State requirements, each retail electric consumer may des-
14 ignate any entity that aggregates consumers to negotiate
15 on the consumer’s behalf the purchase of retail electric
16 energy on an aggregate basis if the consumer is served
17 by a local distribution company whose local distribution
18 facilities are subject to open access, and no State may pro-
19 hibit any political subdivision of a State or any electric
20 cooperative from serving as an entity that aggregates con-
21 sumers, if such entity provides open access to any local
22 distribution facilities it may own or operate.”.

1 **SEC. 532. INTERCONNECTION.**

2 (a) DISTRIBUTED GENERATION FACILITIES.—Sec-
3 tion 210 of the Federal Power Act is amended by adding
4 the following at the end thereof:

5 “(f) SPECIAL RULE FOR DISTRIBUTED GENERATION
6 FACILITIES.—

7 “(1) DEFINITION.—As used in this subsection,
8 the term ‘distributed generation facility’ means an
9 electric power generation facility that serves retail
10 electric consumers at the facility site and intercon-
11 nects with local distribution facilities.

12 “(2) INTERCONNECTION.—A local distribution
13 company shall interconnect a distributed generation
14 facility with the local distribution facilities of such
15 company if the distributed generation facility owner
16 complies with the final rule promulgated under para-
17 graph (3) and pays the costs directly related to such
18 interconnection.

19 “(3) RULES.—Within one year after the date of
20 enactment of this subsection, the Commission shall
21 promulgate a final rule to establish safety, reli-
22 ability, and power quality standards relating to dis-
23 tributed generation facilities. To the extent feasible,
24 the Commission shall develop the standards through
25 a process involving interested parties. For purposes
26 of developing such standards, the Commission shall

1 establish an advisory committee composed of quali-
2 fied experts to make recommendations to the Com-
3 mission.”.

4 (b) INTERCONNECTION OF OTHER FACILITIES.—
5 Section 210 of the Federal Power Act is amended as fol-
6 lows:

7 (1) In subsection (a)(1) (16 U.S.C.
8 824i(a)(1))—

9 (A) by inserting “transmitting utility, local
10 distribution companies” after “electric utility,”;
11 and

12 (B) by inserting “any transmitting utility,”
13 after “small power production facility,” in sub-
14 paragraph (A).

15 (2) In subsection (b)(2) (16 U.S.C. 824i(b)(2))
16 by striking “an evidentiary hearing” and inserting
17 “a hearing”.

18 (3) In subsection (c)(2) by striking “or” at the
19 end of subparagraph (B), by striking “and” the end
20 of subparagraph (C) and inserting “or”, and adding
21 the following at the end thereof:

22 “(D) promote competition in electricity
23 markets, and”.

24 (4) In subsection (d) by deleting the last sen-
25 tence.

1 (5) By adding the following at the end thereof:

2 “(g) TRANSMISSION INTERCONNECTION RULE.—

3 Within one year after the date of enactment of this sub-
4 section, the Commission shall promulgate a final rule to
5 establish safety, reliability, and power quality standards
6 for the interconnection of any generating facility with the
7 transmission facilities of any transmitting utility. To the
8 extent feasible, the Commission shall develop the stand-
9 ards through a process involving interested parties. For
10 purposes of developing such standards, the Commission
11 shall establish an advisory committee composed of quali-
12 fied experts to make recommendations to the Commis-
13 sion.”.

14 **TITLE VI—FEDERAL ELECTRIC**
15 **UTILITIES**

16 **Subtitle A—Tennessee Valley**
17 **Authority**

18 **SEC. 601. DEFINITIONS.**

19 For purposes of this subtitle:

20 (1) The term “Commission” means the Federal
21 Energy Regulatory Commission.

22 (2) The term “distributor” means a municipal
23 or cooperative organization that owns, controls, or
24 operates local distribution facilities and which on
25 December 31, 1997, purchased electric power at

1 wholesale from the Tennessee Valley Authority
2 under an all-requirements contract.

3 (3) The term “distributor service area” means
4 the geographic area within which a distributor is au-
5 thorized by State law to sell electric power to retail
6 electric consumers on the date of enactment of this
7 Act.

8 (4) The term “electric utility” has the same
9 meaning as provided by section 3(22) of the Federal
10 Power Act (16 U.S.C. 796(22)).

11 (5) The term “excess electric power” means
12 that portion of the electric power and capacity that
13 is available to the Tennessee Valley Authority and
14 which exceeds the Tennessee Valley Authority’s firm
15 power supply obligations under contracts entered
16 into in accordance with sections 10, 11, and 12 of
17 the Tennessee Valley Authority Act of 1933 (16
18 U.S.C. 831i, 831j, and 831k).

19 (6) The term “public utility” has the same
20 meaning as provided by section 201(e) of the Fed-
21 eral Power Act (16 U.S.C. 824(e)(1)).

22 (7) The term “retail electric consumer” has the
23 same meaning as provided by section 3 of the Fed-
24 eral Power Act (16 U.S.C. 796).

1 (8) The term “Tennessee Valley Region” means
2 the geographic area in which the Tennessee Valley
3 Authority or its distributors were the primary source
4 of electric power on December 31, 1997.

5 **SEC. 602. WHOLESALE COMPETITION IN THE TENNESSEE**
6 **VALLEY REGION.**

7 (a) AMENDMENTS TO THE FEDERAL POWER ACT.—

8 (1) Section 212(f) of the Federal Power Act
9 (16 U.S.C. 824k(f)), relating to interconnection or
10 wheeling orders that result in the sale or delivery of
11 electric power outside the Tennessee Valley Region,
12 is repealed.

13 (2) Section 212(j) of the Federal Power Act
14 (16 U.S.C. 824k(j)), relating to transmission within
15 the Tennessee Valley Region, is repealed.

16 (b) AMENDMENTS TO THE TENNESSEE VALLEY AU-
17 THORITY ACT.—(1) The third sentence of the first para-
18 graph of section 15d(a) of the Tennessee Valley Authority
19 Act of 1933 (16 U.S.C. 831n–4(a)), limiting the sale or
20 delivery of electric power outside the area for which the
21 Tennessee Valley Authority or its distributors were the
22 primary source of electric power on July 1, 1957, is re-
23 pealed.

1 (2) The second and third paragraphs of section
2 15d(a) of the Tennessee Valley Authority Act of 1933 (16
3 U.S.C. 831n-4(a)) are repealed.

4 **SEC. 603. TENNESSEE VALLEY AUTHORITY POWER SALES.**

5 (a) LIMIT ON RETAIL SALES BY TENNESSEE VALLEY
6 AUTHORITY.—Notwithstanding sections 10, 11, and 12 of
7 the Tennessee Valley Authority Act (16 U.S.C. 831i), the
8 Tennessee Valley Authority shall not sell electric power at
9 retail, except it may sell electric power to—

10 (1) a retail electric consumer (or predecessor in
11 interest) that had a contract for the purchase of
12 electric power from the Tennessee Valley Authority
13 on the date of enactment of this Act; or

14 (2) a retail electric consumer who consumes
15 that electric power within a distributor service area,
16 if—

17 (A) the distributor's firm electric power
18 purchases from the Tennessee Valley Authority
19 are 50 percent or less of the distributor's total
20 retail sales; or

21 (B) the distributor agrees that the Ten-
22 nessee Valley Authority can sell electric power
23 to such retail electric consumer.

24 (b) REGIONAL PREFERENCE FOR WHOLESALE
25 POWER SALES.—

1 (1) REGIONAL PREFERENCE.—Notwithstanding
2 sections 10, 11, and 12, or any other provision of
3 the Tennessee Valley Authority Act of 1933 (16
4 U.S.C. 831 and following), the sale of electric power
5 at wholesale by the Tennessee Valley Authority for
6 use outside the Tennessee Valley Region shall be
7 limited to excess electric power.

8 (2) SALES OF EXCESS ELECTRIC POWER.—The
9 Tennessee Valley Authority shall not offer firm ex-
10 cess electric power under an agreement with a term
11 of three years or longer to a new wholesale customer
12 at rates, terms, and conditions more favorable than
13 those offered to any distributor for comparable elec-
14 tric power, taking into account such factors as the
15 amount of electric power sold, the firmness of such
16 power, and the length of the contract term unless
17 the distributor or distributors that are purchasing
18 electric power under equivalent firm power contracts
19 agree to the sale to the new customer.

20 Nothing in this subsection shall prevent the Tennessee
21 Valley Authority from making exchange power arrange-
22 ments with other electric utilities when economically fea-
23 sible.

24 (c) REGULATION OF TVA WHOLESALE POWER
25 SALES.—Notwithstanding section 201(f) of the Federal

1 Power Act, sections 205, 206, 208, and 210 through 213
2 and sections 301 through 304, 306, 307 (except the last
3 sentence of paragraph (c)), 308, 309, 313, and 317 of the
4 Federal Power Act apply to sales of electric power at
5 wholesale by the Tennessee Valley Authority for use out-
6 side the Tennessee Valley Region to the same extent and
7 in the same manner as such provisions apply to wholesale
8 sales of electric power in interstate commerce by a public
9 utility otherwise subject to the jurisdiction of the Commis-
10 sion under part II of such Act.

11 (d) APPLICATION OF TENNESSEE VALLEY AUTHOR-
12 ITY ACT TO SALES OUTSIDE TENNESSEE VALLEY RE-
13 GION.—The third proviso of section 10 of the Tennessee
14 Valley Authority Act of 1933 (16 U.S.C. 831i) and the
15 second and third provisos of section 12 of the Tennessee
16 Valley Authority Act of 1933 (16 U.S.C. 831k) shall not
17 apply to any sale of excess electric power by the Tennessee
18 Valley Authority for use outside the Tennessee Valley Re-
19 gion.

20 **SEC. 604. TENNESSEE VALLEY AUTHORITY ELECTRIC GEN-**
21 **ERATION FACILITIES.**

22 Section 15d(a) of the Tennessee Valley Authority Act
23 of 1933 (16 U.S.C. 831n–4(a)) is amended by striking
24 the period at the end of the second sentence and inserting
25 the following: “, if the Corporation determines that the

1 construction, acquisition, enlargement, improvement, or
2 replacement of any plant or facility used or to be used
3 for the generation of electric power is necessary to supply
4 the demands of distributors (as defined in section 601 of
5 the Electricity Competition and Reliability Act) and, to
6 the extent permitted by section 603(a) of such Act, retail
7 electric consumers of the Corporation.”.

8 **SEC. 605. RENEGOTIATION OF ALL REQUIREMENTS POWER**
9 **CONTRACTS.**

10 (a) RENEGOTIATION.—Within one year following the
11 date of enactment of this Act, the Tennessee Valley Au-
12 thority and the distributors shall renegotiate their existing
13 all requirements power contracts with respect to—

14 (1) the remaining term;

15 (2) the length of the termination notice;

16 (3) the amount of electric power a distributor
17 may purchase from an electric utility other than the
18 Tennessee Valley Authority, and access to the Ten-
19 nessee Valley Authority transmission system for that
20 electric power; and

21 (4) stranded cost recovery.

22 (b) RESOLUTION.—If the parties are unable to reach
23 agreement with regard to any of the issues under sub-
24 section (a) within the one-year period set forth in sub-

1 section (a), the distributor shall have the right to termi-
2 nate the contract upon not less than three years notice.

3 **SEC. 606. REGULATION OF TENNESSEE VALLEY AUTHORITY**
4 **TRANSMISSION SYSTEM.**

5 Notwithstanding sections 201(b)(1) and 201(f) of the
6 Federal Power Act, sections 202(h), 205, 206, 208, and
7 210 through 213 and sections 301 through 304, 306, 307
8 (except the last sentence of subsection (c)), 308, 309, 313,
9 and 317 of the Federal Power Act apply to the trans-
10 mission and local distribution of electric power by the Ten-
11 nessee Valley Authority to the same extent and in the
12 same manner as such provisions apply to the transmission
13 of electric power in interstate commerce by a public utility
14 otherwise subject to the jurisdiction of the Commission
15 under part II of such Act.

16 **SEC. 607. REGULATION OF TENNESSEE VALLEY AUTHORITY**
17 **DISTRIBUTORS.**

18 (a) ELECTION TO REPEAL TENNESSEE VALLEY AU-
19 THORITY REGULATION OF DISTRIBUTORS.—Upon the
20 election of a distributor, the third proviso of section 10
21 of the Tennessee Valley Authority Act of 1933 (16 U.S.C.
22 831i) and the second and third provisos of section 12 of
23 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
24 831k) shall not apply to wholesale sales of electric power
25 by the Tennessee Valley Authority in the Tennessee Valley

1 Region after the date of enactment of this Act, and the
2 Tennessee Valley Authority shall not be authorized to reg-
3 ulate, by means of rules, contract provisions, resale rate
4 schedules, contract termination rights, or any other meth-
5 od, any rates, terms, or conditions imposed on the resale
6 of such electric power by such distributor, or any rates,
7 terms, or conditions for the use of local distribution facili-
8 ties.

9 (b) AUTHORITY OF GOVERNING BODIES OF DIS-
10 TRIBUTORS.—Any regulatory authority exercised by the
11 Tennessee Valley Authority over any distributor making
12 an election authorized in subsection (a) shall be exercised
13 by the governing body of such distributor, in accordance
14 with the laws of the State in which it is organized. In the
15 event a distributor does not make the election authorized
16 in subsection (a), the provisions of the Tennessee Valley
17 Authority Act specified in that subsection shall continue
18 to apply for the duration of any wholesale power contract
19 between the Tennessee Valley Authority and the dis-
20 tributor, according to its terms.

21 (c) USE OF FUNDS.—In any contract between the
22 Tennessee Valley Authority and a distributor for the pur-
23 chase of at least 70 percent of the distributor's require-
24 ments for the sale of electric power, the Tennessee Valley
25 Authority shall include such terms and conditions as may

1 be reasonably necessary to assure that the financial bene-
2 fits of a distributor's electric system operations are allo-
3 cated to the distributor's retail electric consumers.

4 (d) REMOVAL OF PURPA RATEMAKING AUTHOR-
5 ITY.—Section 3(17) of the Public Utility Regulatory Poli-
6 cies Act of 1978 (16 U.S.C. 2602(17)) is amended by
7 striking “, and in the case of an electric utility with re-
8 spect to which the Tennessee Valley Authority has rate-
9 making authority, such term means the Tennessee Valley
10 Authority.

11 **SEC. 608. STRANDED COST RECOVERY.**

12 (a) IN GENERAL.—Within six months after the date
13 of enactment of this Act, or sooner as part of any distribu-
14 tors renegotiation of its contract under section 605, the
15 Tennessee Valley Authority shall make a good faith effort
16 to reach agreement with distributors for recovery of its
17 stranded costs. The Tennessee Valley Authority and the
18 distributors shall submit jointly, or if they disagree, sub-
19 mit separately, a stranded cost recovery plan or plans to
20 the Commission for review. The Commission shall ap-
21 prove, reject, or modify such plan or plans and issue an
22 order within one year of the date of enactment of this Act,
23 to provide for recovery of stranded costs (as determined
24 by the Commission) by the Tennessee Valley Authority
25 from any departing power or transmission customer. This

1 order shall provide that customers that did not cause
2 stranded costs to be incurred by the Tennessee Valley Au-
3 thority are not obligated to pay such costs on behalf of
4 other customers. The Tennessee Valley Authority is au-
5 thorized to recover such of its stranded costs as are ap-
6 proved by the Commission. The Tennessee Valley Author-
7 ity may not recover stranded costs after September 30,
8 2007, unless the person against whom such charges are
9 assessed agrees otherwise.

10 (b) DEBT.—Stranded costs recovered by the Ten-
11 nessee Valley Authority under subsection (a) shall be used
12 to pay down the Tennessee Valley Authority's debt to the
13 extent determined by the Tennessee Valley Authority to
14 be consistent with proper financial management. The Ten-
15 nessee Valley Authority may not use amounts recovered
16 to pay for additions to the Tennessee Valley Authority's
17 generation capacity.

18 (c) UNBUNDLING.—Any stranded cost recovery
19 charges assessed by the Tennessee Valley Authority on re-
20 tail or wholesale customers or assessed on retail electric
21 consumers served by distributors shall be unbundled from
22 the retail or wholesale rate otherwise applicable to that
23 consumer and stated on the consumer's bill as a separate
24 charge.

1 (d) REPORT.—Beginning in fiscal year 2001, as part
2 of the annual management report submitted by the Ten-
3 nessee Valley Authority to Congress, the Tennessee Valley
4 Authority shall also specifically report:

5 (1) the status of the Tennessee Valley
6 Authority's long-range financial plans and the
7 progress toward its goal of competitively priced elec-
8 tric power, and a general discussion of the Ten-
9 nessee Valley Authority's prospects on meeting the
10 objectives of the Ten Year Business Outlook issued
11 on July 22, 1997;

12 (2) any changes in assumptions since the pre-
13 vious report that may have a material effect on the
14 Tennessee Valley Authority's long-range financial
15 plans;

16 (3) the source of funds used for any generation
17 and transmission capacity additions;

18 (4) the use or other disposition of amounts re-
19 covered by the Tennessee Valley Authority under the
20 Tennessee Valley Authority Act and this Act;

21 (5) the amount by which the Tennessee Valley
22 Authority's publicly-held debt was reduced; and

23 (6) the projected amount by which the Ten-
24 nessee Valley Authority's publicly held debt will be
25 reduced.

1 **SEC. 609. APPLICATION OF ANTITRUST LAW.**

2 (a) IN GENERAL.—The Tennessee Valley Authority
3 shall be subject to the antitrust laws of the United States
4 with respect to the operation of its electric power and
5 transmission systems. For purposes of this section, the
6 term “antitrust laws” has the meaning given such term
7 in subsection (a) of the first section of the Clayton Act
8 (15 U.S.C. 12(a)), except that such term includes section
9 5 of the Federal Trade Commission Act (15 U.S.C. 45)
10 to the extent that such section 5 applies to unfair methods
11 of competition.

12 (b) DAMAGES.—No damages, interest on damages,
13 costs, or attorney’s fees may be recovered under section
14 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
15 15c) from the Tennessee Valley Authority.

16 **SEC. 610. SAVINGS PROVISION.**

17 Nothing in this subtitle shall affect section 15d(b) of
18 the Tennessee Valley Authority Act of 1933 (16 U.S.C.
19 831n–4(b)), providing that bonds issued by the Tennessee
20 Valley Authority shall not be obligations of, nor shall pay-
21 ment of the principal thereof or interest thereon be guar-
22 anteed by, the United States.

23 **Subtitle B—Bonneville Power**
24 **Administration**

25 **SEC. 621. DEFINITIONS.**

26 As used in this subtitle:

1 (1) The term ‘Bonneville Administrator’ means
2 the Administrator of the Bonneville Power Adminis-
3 tration.

4 (2) The term ‘Bonneville Transmission System’
5 means transmission facilities owned or leased by the
6 United States and operated by the Bonneville Power
7 Administration or by another entity under section
8 202(h) of the Federal Power Act.

9 (3) The terms “Commission”, “electric utility”,
10 “retail electric consumer”, and “transmitting util-
11 ity” have the same meanings as provided by section
12 3 of the Federal Power Act (16 U.S.C. 796).

13 (4) The term “major resource” has the mean-
14 ing given such term in section 3(12) of the Pacific
15 Northwest Electric Power Planning and Conserva-
16 tion Act.

17 (5) The term ‘Pacific Northwest’ has the mean-
18 ing given that term in section 3(14) of the Pacific
19 Northwest Electric Power Planning and Conserva-
20 tion Act (16 U.S.C. 839a(14)).

21 **SEC. 622. REGULATION OF BONNEVILLE TRANSMISSION**
22 **SYSTEM.**

23 (a) IN GENERAL.—After September 30, 2001, not-
24 withstanding section 201(f) of the Federal Power Act, sec-
25 tions 202(h), 205, 206, 208, and 210 through 213 and

1 sections 301 through 304, 306, 307 (except the last sen-
2 tence of paragraph (c)), 308, 309, 313, and 317 of the
3 Federal Power Act apply to the Bonneville Transmission
4 System and the transmission of electric energy over the
5 Bonneville Transmission System.

6 (b) ADDITIONAL RULES.—Any determination by the
7 Commission of rates, terms, and conditions for the trans-
8 mission of electric energy under subsection (a) shall be
9 subject to the following rules:

10 (1) Phasing in changes in transmission rates or
11 charges that would cause unreasonable cost shifts
12 among transmission customers if implemented at
13 once.

14 (2) Mitigating unreasonable adverse effects on
15 transmission customers in the Pacific Northwest
16 that would otherwise result from changes in the
17 treatment of costs to acquire transmission to serve
18 customers historically served by General Transfer
19 Agreements entered into between the Bonneville Ad-
20 ministrator and other transmitting utilities prior to
21 the enactment of this Act. This paragraph shall not
22 apply if the Bonneville Transmission System is oper-
23 ated by a regional transmission organization ap-
24 proved by the Commission.

1 (3) No direct assignment of the costs of trans-
2 mission facilities that were included in the Bonne-
3 ville Administrator's transmission rates in effect on
4 October 1, 1998, or costs for replacement of such fa-
5 cilities.

6 (4) Assuring the Bonneville Power Administra-
7 tion's transmission rates and charges are established
8 sufficient to—

9 (A) recover Federal investment in the Bon-
10 neville Transmission System over a reasonable
11 period of years after first meeting all the Bon-
12 neville Power Administration's other trans-
13 mission costs and expenses; and

14 (B) produce the revenues necessary to as-
15 sure timely payment of all transmission-related
16 costs and expenses;

17 provided that this paragraph shall not be construed
18 to require any particular methodology for setting
19 transmission rates.

20 (5) Rules established by the Commission to—

21 (A) assure transmission access is provided
22 over the Bonneville Transmission System for
23 hydroelectric power that must be generated and
24 transmitted at a particular time in order to re-
25 duce levels of dissolved nitrogen gas harmful to

1 fish, with such access to be provided in a man-
2 ner that displaces other electric energy using
3 the Bonneville Transmission System but does
4 not impair service to loads, require operations
5 that may damage generation facilities, or alter
6 commercial relationships between the electric
7 utility whose electric energy was displaced and
8 its customer; and

9 (B) provide methods for compensation be-
10 tween or among the electric utility that sold the
11 hydroelectric power and the party or parties af-
12 fected by the displacement of electric energy.

13 (6) Section 623 of this Act (relating to sur-
14 charge on transmission rates to recover otherwise
15 nonrecoverable power costs).

16 (c) APPLICABILITY.—Subsection (a) shall not apply
17 to—

18 (1) the Bonneville Power Administration's ac-
19 tivities other than transmission of electric energy
20 over the Bonneville Transmission System; or

21 (2) a contract in effect on the date of enact-
22 ment of this Act, except for rates which are adjust-
23 able by the Bonneville Administrator under the con-
24 tract; a treaty of the United States; or a contract
25 concerning the delivery of electric energy and capac-

1 ity entered into by entities designated pursuant to
2 such a treaty.

3 (d) PRIORITY OF PAYMENTS.—Nothing in this sec-
4 tion shall alter or be construed to alter the priority of pay-
5 ments established in section 13(b) of the Federal Colum-
6 bia River Transmission System Act (16 U.S.C. 838k(b))
7 or the requirements of section 11 of that Act (16 U.S.C.
8 838i).

9 (e) COSTS AND REVENUES.—Costs and revenues
10 shall be allocated to the Bonneville Transmission System
11 in accordance with rules to be promulgated by the Com-
12 mission.

13 (f) HEARINGS.—In any proceeding, or part of a pro-
14 ceeding, that the Commission sets for hearing before an
15 administrative law judge, with respect to the rates, terms,
16 or conditions for transmission of electric energy by the
17 Bonneville Power Administration, all evidentiary hearings
18 shall be conducted in the Pacific Northwest.

19 **SEC. 623. SURCHARGE ON TRANSMISSION RATES TO RE-**
20 **COVER NONRECOVERABLE POWER COSTS.**

21 (a) SURCHARGE AUTHORITY.—By October 1, 2001,
22 notwithstanding section 201(f) of the Federal Power Act,
23 the Bonneville Administrator shall propose and the Com-
24 mission shall, by accepting or modifying the Bonneville
25 Administrator's proposal, authorize the Administrator to

1 place a surcharge on rates or charges for transmission
2 services over the Bonneville Transmission System when
3 necessary to recover power costs that cannot be recovered
4 through power revenues to meet the cost recovery require-
5 ments of section 7(a)(1) of the Pacific Northwest Electric
6 Power Planning and Conservation Act (16 U.S.C.
7 839e(a)(1)).

8 (b) REQUIREMENTS.—The transmission surcharge
9 referred to in subsection (a) shall—

10 (1) not recover more than \$600,000,000 nor
11 more than \$100,000,000 in any fiscal year;

12 (2) be available only between October 1, 2001,
13 and October 1, 2016;

14 (3) be implemented by the Bonneville Adminis-
15 trator only when the Administrator projects that
16 available financial reserves in the Bonneville Power
17 Administration Fund attributable to the power func-
18 tion will fall below \$150,000,000; and

19 (4) not apply to use of the Bonneville Trans-
20 mission System for sales of electric energy for use
21 outside the Pacific Northwest.

22 (c) IMPLEMENTATION.—The Bonneville Adminis-
23 trator shall have sole discretion to implement the sur-
24 charge on rates or charges for transmission services au-
25 thorized by the Commission under subsection (a). Before

1 implementing the surcharge, the Bonneville Administrator
2 shall—

3 (1) make available information concerning the
4 need for and amount of the surcharge, and its pro-
5 posed effective date; and

6 (2) conduct a public process of not less than 30
7 days in the Pacific Northwest to receive comments
8 on implementation of the surcharge and receive rec-
9 ommendations from the Pacific Northwest Electric
10 Power and Conservation Planning Council con-
11 cerning cost management options that could mitigate
12 the need to implement the surcharge.

13 If, after taking into consideration those comments and
14 recommendations and ensuring that reasonable and pru-
15 dent alternatives to implementation of the surcharge have
16 been undertaken, the Bonneville Administrator decides to
17 implement a surcharge, the Administrator may implement
18 the surcharge by filing the proposed surcharge with the
19 Commission. The surcharge shall take effect on the Bon-
20 neville Administrator's proposed effective date, but no ear-
21 lier than 60 days following the Administrator's filing of
22 the proposed surcharge to the Commission for approval.

23 (d) COMMISSION REVIEW.—Within 120 days after
24 the effective date of the surcharge, the Commission shall
25 accept, reject, or modify the surcharge and communicate

1 its decision to the Bonneville Administrator. If the Com-
2 mission rejects or modifies the surcharge, the Commission
3 may order the Bonneville Power Administration to refund,
4 with interest, the portion of the surcharge the Commission
5 found not justified or the Commission may authorize the
6 Bonneville Power Administration to recover amounts from
7 customers who underpaid or did not pay the surcharge.
8 If the Commission orders modification of the surcharge,
9 such modified charge shall be effective on the date and
10 for the time period specified by the Commission.

11 (e) REPAYMENT.—Any amounts recovered through
12 the transmission surcharge shall be treated as loans to the
13 Bonneville Power Administration's power function by the
14 transmission function. The Bonneville Power Administra-
15 tion shall repay the loans as soon as possible from power
16 revenues once the Bonneville Power Administration is able
17 to meet other power cost recovery and Treasury repay-
18 ment obligations on an annual basis using power revenues.
19 To the extent practicable, the Administrator shall refund
20 all or a portion of the surcharge collected from trans-
21 mission customers, as directed and determined appro-
22 priate by the Commission. The borrowed revenues shall
23 bear interest at a rate determined appropriate by the
24 Commission.

1 (f) **COST RECOVERY.**—For the recovery of costs re-
2 lating to any generation or conservation resources fi-
3 nanced by debt issued by a non-Federal party before Octo-
4 ber 1, 1998 (and any refundings and refinancing thereof),
5 and secured by an obligation of the Bonneville Power Ad-
6 ministration to make payments or net bill power and
7 transmission service that cannot be recovered through
8 power rates and charges and paid in accordance with the
9 application of revenues and priority of payments specified
10 by section 13(b) of the Federal Columbia River Trans-
11 mission System Act of 1974 (16 U.S.C. 838k(b)), the pro-
12 visions of this section apply, except for the recovery limita-
13 tions under subsection (b)(1) and the time limits under
14 subsection (b)(2), but only to the extent such recovery
15 would have been allowed under laws applicable to the Bon-
16 neville Power Administration as of October 1, 1998.

17 **SEC. 624. LIMIT ON RETAIL SALES BY BONNEVILLE POWER**
18 **ADMINISTRATION.**

19 Notwithstanding section 5(a) of the Bonneville
20 Project Act (16 U.S.C. 832d(a)), the Bonneville Power
21 Administration shall not sell electric energy or capacity to
22 any retail electric consumer that did not have a contract
23 for the purchase of electric energy from the Bonneville
24 Power Administration for use at specific facilities on Octo-
25 ber 1, 1998.

1 **SEC. 625. ACQUISITION OF NEW MAJOR GENERATING RE-**
2 **SOURCES.**

3 Section 6 of the Pacific Northwest Electric Power
4 Planning and Conservation Act (16 U.S.C. 839d) is
5 amended by adding the following new subsection at the
6 end thereof:

7 “(n) ACQUISITION OF NEW MAJOR GENERATING RE-
8 SOURCES.—Notwithstanding any other provision of law,
9 the Administrator shall not acquire any new major re-
10 source after the date of enactment of this subsection un-
11 less the Commission determines that satisfactory contrac-
12 tual and other financial arrangements have been made to
13 ensure that the customer or customers on whose behalf
14 the resource is acquired commit to pay the full cost of
15 the resource and the Administrator shall not acquire any
16 new major resource that the Administrator reasonably ex-
17 pects may require implementation of the surcharge au-
18 thorized by section 623 of the Electricity Competition and
19 Reliability Act.”.

20 **SEC. 626. APPLICATION OF ANTITRUST LAW.**

21 (a) IN GENERAL.—The Bonneville Power Adminis-
22 tration shall be subject to the antitrust laws of the United
23 States with respect to its sale of electric energy and capac-
24 ity and the operation of its transmission system. For pur-
25 poses of this section, the term “antitrust laws” has the
26 meaning given such term in subsection (a) of the first sec-

tion of the Clayton Act (15 U.S.C. 12(a)), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section 5 applies to unfair methods of competition.

(b) DAMAGES.—No damages, interest on damages, costs, or attorney’s fees may be recovered under section 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or 15c) from the Bonneville Power Administration.

SEC. 627. CONFORMING AMENDMENTS.

(a) FEDERAL POWER ACT.—Section 212(i) of the Federal Power Act (16 U.S.C. 824(i)) is repealed.

(b) FEDERAL COLUMBIA RIVER TRANSMISSION SYSTEM ACT.—(1) Section 3(c) of the Federal Columbia River Transmission System Act (16 U.S.C. 838a(c)) is amended by inserting “, and transmission facilities with an estimated capital cost exceeding \$30,000,000 in 1998 dollars, adjusted using the United States Gross Domestic Product Implicit Price Deflator Index”, after “own facilities”.

(2) Section 6 of the Federal Columbia River Transmission System Act (16 U.S.C. 838d) is repealed.

(3) Section 9 of the Federal Columbia River Transmission System Act (16 U.S.C. 838g) is amended to read as follows:

1 **“SEC. 9. RATES AND CHARGES.**

2 “Schedules of rates and charges for the sale, includ-
3 ing dispositions to Federal agencies, of all electric power
4 made available to the Administrator pursuant to section
5 8 of this Act or otherwise acquired shall be established—

6 “(1) with a view to encouraging the widest pos-
7 sible diversified use of electric power at the lowest
8 possible rates to consumers consistent with sound
9 business principles;

10 “(2) having regard to the recovery (upon the
11 basis of the application of such rate schedules to the
12 capacity of the electric facilities of the projects) of
13 the cost of producing such electric power, including
14 the amortization of the capital investment allocated
15 to power over a reasonable period of years and pay-
16 ments provided for in section 11(b)(9) of this Act;
17 and

18 “(3) at levels to produce such additional power
19 revenues as may be required, in the aggregate with
20 all other power revenues of the Administrator, to
21 pay when due the principal of, premiums, discounts,
22 and expenses in connection with the issuance of and
23 interest on all bonds issued and outstanding pursu-
24 ant to this Act for other than the construction, ac-
25 quisition, and replacement of the Federal trans-
26 mission system, and amounts required to establish

1 and maintain reserve and other funds and accounts
2 established in connection therewith.

3 Electric power rates under this section shall be established
4 by the Administrator in accordance with section 7 of the
5 Pacific Northwest Electric Power Planning and Conserva-
6 tion Act.”.

7 (4) Section 10 of the Federal Columbia River Trans-
8 mission System Act (16 U.S.C. 838h) is repealed.

9 (c) REGIONAL PREFERENCE ACT.—Section 6 of Pub-
10 lic Law 88–552 (16 U.S.C. 837e), commonly known as
11 the “Regional Preference Act”, is amended by striking
12 “Federal energy or” in the first sentence and by striking
13 the second sentence.

14 (d) NORTHWEST POWER ACT.—(1) Section 7(a)(1)
15 of the Pacific Northwest Electric Power Planning and
16 Conservation Act (16 U.S.C. 839e(a)(1)) is amended to
17 read as follows:

18 “(a)(1) The Administrator shall establish, and peri-
19 odically review and revise, rates for the sale and disposi-
20 tion of electric power and shall periodically review and,
21 if necessary, propose revisions to rates for the trans-
22 mission of electric power. Rates for the sale and disposi-
23 tion of electric power shall be established and, as appro-
24 priate, revised to recover, in accordance with sound busi-
25 ness principles, the costs associated with the acquisition

1 and conservation of electric power, including the amortiza-
2 tion of the Federal investment allocable to electric power
3 rates in the Federal Columbia River Power System (in-
4 cluding irrigation electric power-related costs required to
5 be repaid out of electric power revenues) over a reasonable
6 period of years and the other costs and expenses incurred
7 by the Administrator pursuant to this Act and other provi-
8 sions of law. Rates for the sale and disposition of electric
9 power shall be established in accordance with section 9
10 of the Federal Columbia River Transmission System Act
11 (16 U.S.C. 838g), section 5 of the Flood Control Act of
12 1944 (16 U.S.C. 825s), and this Act.”.

13 (2) Section 7(a)(2) of the Pacific Northwest Electric
14 Power Planning and Conservation Act (16 U.S.C.
15 839e(a)(2)) is amended—

16 (A) by striking “Rates” and inserting “Power
17 rates”;

18 (B) by inserting “and” after the comma in sub-
19 paragraph (A);

20 (C) by striking “, and” and inserting a period
21 at the end of subparagraph (B); and

22 (D) by striking subparagraph (C).

23 (3) Section 7(i) of the Pacific Northwest Electric
24 Power Planning and Conservation Act (16 U.S.C. 839e(i))

1 is amended by inserting “power” after “establishing” in
2 the first sentence.

3 (4) Section 9(d) of the Pacific Northwest Electric
4 Power Planning and Conservation Act (16 U.S.C.
5 839f(d)) is amended by striking “transmission access,”
6 and inserting “power” before “services” in the second sen-
7 tence.

8 (5) Section 9(i)(3) of the Pacific Northwest Electric
9 Power Planning and Conservation Act (16 U.S.C.
10 839f(i)(3)) is amended by inserting “power” before “serv-
11 ices” each place it appears, and by striking “trans-
12 mission,” in the first sentence.

13 (e) BONNEVILLE PROJECT ACT.—Section 2(e) of the
14 Bonneville Project Act (16 U.S.C. 832a(e)) is amended
15 by striking the colon and all that follows and inserting
16 a period.

17 **Subtitle C—Other Power**
18 **Marketing Administrations**

19 **SEC. 631. DEFINITIONS.**

20 For purposes of this subtitle:

21 (1) The term “Administrator” means the ad-
22 ministrator of a Federal power marketing adminis-
23 tration.

24 (2) The term “Commission” means the Federal
25 Energy Regulatory Commission.

1 (3) The term “Federal power marketing admin-
2 istrations” means the Western Area Power Adminis-
3 tration, Southwestern Power Administration, and
4 Southeastern Power Administration.

5 (4) The term “power generating agencies”
6 means the Bureau of Reclamation, the Army Corps
7 of Engineers, and the International Boundary and
8 Water Commission.

9 (5) The term “public utility” means a public
10 utility as defined in section 201(e) of the Federal
11 Power Act.

12 **SEC. 632. WHOLESALE POWER SALES BY FEDERAL POWER**
13 **MARKETING ADMINISTRATIONS.**

14 (a) RATES, TERMS, AND CONDITIONS.—(1) All rates
15 and charges made, demanded, or received for the sale of
16 electric energy and capacity by each Federal power mar-
17 keting administration to its electric energy customers shall
18 be the lowest possible rates and charges that will recover
19 from such customers over a reasonable period of years,
20 in accordance with sound business principles, all costs in-
21 curred by the United States for the production of electric
22 energy sold by such Federal power marketing administra-
23 tion, including repayment of the capital investment allo-
24 cated to power and costs assigned by Acts of Congress
25 to power for repayment.

1 (2) The Commission may modify proposed rates sub-
2 mitted by any Federal power marketing administration
3 and establish terms and conditions consistent with this
4 subsection. In its determination of rates, terms, and condi-
5 tions for the sale of electric energy and capacity by the
6 Federal power marketing administrations the Commission
7 shall not review policy judgments and interpretations of
8 laws and regulations made by the power generating agen-
9 cies.

10 (b) EXISTING RATES.—All rates, terms, and condi-
11 tions for the sale of electric energy and capacity by the
12 Federal power marketing administrations placed into ef-
13 fect on a final basis prior to the date of enactment of this
14 Act shall remain in full force and effect unless the Com-
15 mission determines, after a hearing held upon its own mo-
16 tion or upon complaint, that the rates, terms, and condi-
17 tions are inconsistent with subsection (a)(1) and estab-
18 lishes new rates, terms, and conditions.

19 (c) PERIODIC REVIEW.—The Administrators shall
20 periodically review the rates and charges made, demanded,
21 or received by each Federal power marketing administra-
22 tion for the sale of electric energy and capacity. In the
23 event the rates and charges made, demanded, or received
24 by any Federal power marketing administration are incon-
25 sistent with subsection (a)(1), the Administrator of that

1 administration shall propose revised rates. Such rates
2 shall be established in accordance with this section, section
3 5 of the Flood Control Act of 1944 (16 U.S.C. 825s), sec-
4 tion 9(c) of the Reclamation Project Act of 1939 (43
5 U.S.C. 485h(c)), and the Acts specifically applicable to in-
6 dividual projects of the power systems of the power gener-
7 ating agencies.

8 **SEC. 633. REGULATION OF FEDERAL POWER MARKETING**
9 **ADMINISTRATION TRANSMISSION SYSTEMS.**

10 Notwithstanding section 201(f) of the Federal Power
11 Act, sections 202(h), 205, 206, 208, and 210 through 213
12 and sections 301 through 304, 306, 307 (except the last
13 sentence of paragraph (c)), 308, 309, 313, and 317 of the
14 Federal Power Act apply to the transmission of electric
15 energy by the Federal power marketing administrations
16 to the same extent and in the same manner as such provi-
17 sions apply to the transmission of electric energy in inter-
18 state commerce by a public utility otherwise subject to the
19 jurisdiction of the Commission under part II of such Act.

20 **SEC. 634. ACCOUNTING.**

21 Not later than six months after the date of enactment
22 of this Act, the Commission shall promulgate rules con-
23 taining each of the following:

24 (1) **ACCOUNTING PRINCIPLES AND REQUIRE-**
25 **MENTS.**—Procedures to ensure that the Federal

1 power marketing administrations utilize the same
2 accounting principles and requirements as are appli-
3 cable to public utilities pursuant to parts II and III
4 of the Federal Power Act (16 U.S.C. 792 and fol-
5 lowing) with respect to accounting for revenue, ex-
6 penses, investments, and depreciation.

7 (2) COMPLIANCE.—Procedures for the filing of
8 complaints with the Commission by interested per-
9 sons seeking to ensure compliance with the proce-
10 dures of this section.

11 (3) ADMINISTRATIVE RECONCILIATION.—Proce-
12 dures to ensure that the power generating agencies
13 and the Administrators maintain a consistent set of
14 books and records for purposes of repayment obliga-
15 tions.

16 **SEC. 635. APPLICATION OF ANTITRUST LAW.**

17 (a) IN GENERAL.—Each Federal power marketing
18 administration shall be subject to the antitrust laws of the
19 United States with respect to its sale of electric energy
20 and capacity and the operation of its transmission system.
21 For purposes of this section, the term “antitrust laws”
22 has the meaning given such term in subsection (a) of the
23 first section of the Clayton Act (15 U.S.C. 12(a)), except
24 that such term includes section 5 of the Federal Trade

1 Commission Act (15 U.S.C. 45) to the extent that such
2 section 5 applies to unfair methods of competition.

3 (b) DAMAGES.—No damages, interest on damages,
4 costs, or attorney's fees may be recovered under section
5 4, 4A, or 4C of the Clayton Act (15 U.S.C. 15, 15a, or
6 15c) from a Federal power marketing administration.

7 **TITLE VII—ENVIRONMENTAL** 8 **PROVISIONS**

9 **SEC. 701. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

10 Section 1212 of the Energy Policy Act of 1992 is
11 amended to read as follows:

12 **“SEC. 1212. RENEWABLE ENERGY PRODUCTION INCENTIVE.**

13 “(a) INCENTIVE PAYMENTS.—For electric energy
14 generated and sold by a qualified renewable energy facility
15 during the incentive period, the Secretary of Energy (re-
16 ferred to in this section as the ‘Secretary’) shall make,
17 subject to the availability of appropriations, incentive pay-
18 ments to the owner or operator of such facility. The
19 amount of such payment made to any such owner or oper-
20 ator shall be as determined under subsection (e) of this
21 section. Payments under this section may only be made
22 upon receipt by the Secretary of an incentive payment ap-
23 plication which establishes that the applicant is eligible to
24 receive such payment and which satisfies such other re-
25 quirements as the Secretary deems necessary. Such appli-

1 cation shall be in such form, and shall be submitted at
2 such time, as the Secretary shall establish.

3 “(b) QUALIFIED RENEWABLE ENERGY FACILITY.—

4 For purposes of this section, a ‘qualified renewable energy
5 facility’ is a facility which generates electric energy for
6 sale using solar energy, wind, biomass (including methane
7 gas from landfills), geothermal, or a small hydroelectric
8 power project (as defined in section 408(a)(1) of the Pub-
9 lic Utility Regulatory Policies Act of 1978).

10 “(c) ELIGIBILITY WINDOW.—Payments may be made
11 under this section only for electric energy generated from
12 a qualified renewable energy facility first used during the
13 period of 10 fiscal years beginning with the first full fiscal
14 year occurring after the date of enactment of this Act.

15 “(d) INCENTIVE PERIOD.—A qualified renewable en-
16 ergy facility may receive payments under this section for
17 a period of 10 fiscal years (referred to in this section as
18 the ‘incentive period’). Such period shall begin with the
19 fiscal year in which electric energy generated from the fa-
20 cility is first eligible for such payments.

21 “(e) AMOUNT OF PAYMENT.—

22 “(1) IN GENERAL.—Payments made by the
23 Secretary under this section to the owner or oper-
24 ator of a qualified renewable energy facility shall be
25 based on the number of kilowatt hours of electric en-

1 ergy generated by the facility through the use of
2 solar, wind, biomass, geothermal, or hydroelectric
3 energy during the incentive period. For any facility,
4 the amount of such payment shall be 1.5 cents per
5 kilowatt hour, adjusted as provided in paragraph
6 (2).

7 “(2) ADJUSTMENTS.—The amount of the pay-
8 ment made to any person under this section as pro-
9 vided in paragraph (1) shall be adjusted for inflation
10 for each fiscal year beginning after calendar year
11 1999 in the same manner as provided in the provi-
12 sions of section 29(d)(2)(B) of the Internal Revenue
13 Code of 1986, except that in applying such provi-
14 sions the calendar year 1999 shall be substituted for
15 calendar year 1979.

16 “(3) DUPLICATE BENEFITS.—The amount of
17 the payment made to any person under this section
18 for any facility in any taxable year shall be reduced
19 by the amount that such person receives as a tax
20 credit for such facility in that taxable year under
21 section 45 or section 29 of the Internal Revenue
22 Code of 1986.

23 “(f) SUNSET.—No payment may be made under this
24 section to any qualified renewable energy facility after the
25 expiration of the period of 20 fiscal years beginning with

1 the first full fiscal year occurring after the date of enact-
2 ment of this Act, and no payment made be made under
3 this section to any such facility after a payment has been
4 made with respect to such facility for a period of 10 fiscal
5 years.

6 “(g) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated to the Secretary to carry
8 out the purposes of this section such sums as may be nec-
9 essary for each of the fiscal years 2000 through 2004.”.

10 **SEC. 702. NET METERING.**

11 (a) IN GENERAL.—Title II of the Public Utility Reg-
12 ulatory Policies Act of 1978 (16 U.S.C. 824a–1 and fol-
13 lowing) is amended by redesignating section 214 as 215
14 and inserting after section 213 the following new section:

15 **“SEC. 214. NET METERING.**

16 “(a) DEFINITIONS.—For purposes of this section:

17 “(1) The term ‘eligible on-site generating facil-
18 ity’ means a facility on the site of a retail electric
19 consumer with a peak generating capacity of 20 kilo-
20 watts or less that is fueled solely by solar energy,
21 wind, biomass, or geothermal.

22 “(2) The term ‘net metering service’ means
23 service to a retail electric consumer under which
24 electric energy generated by that consumer from an
25 eligible on-site generating facility and delivered to

1 local distribution facilities through the same meter
2 or a comparable metering system through which
3 purchased electric energy is received may be used to
4 offset electric energy provided by the retail electric
5 supplier to the retail electric consumer during the
6 applicable billing period. In no event shall the net
7 electric energy bill be less than zero during the ap-
8 plicable billing period.

9 “(3) The terms ‘local distribution company’,
10 ‘retail electric consumer’, and ‘retail electric sup-
11 plier’ have the meanings given such terms in section
12 3 of the Federal Power Act.

13 “(b) REQUIREMENT TO PROVIDE NET METERING
14 SERVICE.—Each retail electric supplier shall make avail-
15 able upon request net metering service to any retail elec-
16 tric consumer that the supplier currently serves or solicits
17 for service if the retail electric consumer pays any costs
18 associated with providing such service.

19 “(c) STATE AUTHORITY.—This section does not pre-
20 clude a State from imposing additional requirements con-
21 sistent with the requirements in this section, including the
22 imposition of a cap limiting the amount of net metering
23 available in the State. Nothing in this Act or any other
24 Federal law preempts or otherwise affects authority under
25 State law to require a retail electric supplier to make avail-

1 able net metering service to a retail electric consumer
2 which the supplier serves or offers to serve.”.

3 (b) TABLE OF CONTENTS.—The table of contents for
4 title II of the Public Utility Regulatory Policies Act of
5 1978 (16 U.S.C. 2601 and following) is amended by in-
6 serting the following after the item relating to section 213
7 and redesignating the item relating to section 214 as 215:
“Sec. 214. Net metering.”.

8 **SEC. 703. STATE RENEWABLE ENERGY PORTFOLIO STAND-**
9 **ARDS.**

10 Nothing in this Act or any other Federal law affects
11 the authority of a State to require that a specific percent-
12 age of the electric energy sold by retail electric suppliers
13 to retail electric consumers in that State be generated by
14 solar energy, wind, biomass, geothermal, or any combina-
15 tion thereof, or to require such suppliers to purchase
16 tradable credits to satisfy all or a portion of such require-
17 ment. Upon application of two or more States, the Sec-
18 retary of Energy may establish a system for the trading
19 of such credits, consistent with State law.

20 **TITLE VIII—PROVISIONS RELAT-**
21 **ING TO INTERNAL REVENUE**
22 **CODE**

23 **【Text of title VIII identical to text of title VIII of**
24 **H.R. 2944】**

1 **TITLE IX—MISCELLANEOUS**
2 **PROVISIONS**

3 **SEC. 901. STUDY.**

4 The Secretary of Energy shall report to the Congress
5 within two years after the enactment of this Act on the
6 extent to which actions taken by the States have removed
7 regulatory and statutory barriers to interstate commerce
8 in electric energy. The report shall describe any remaining
9 barriers to interstate commerce and shall make rec-
10 ommendations to the Congress for additional action that
11 may be necessary to lower or eliminate barriers to inter-
12 state commerce in electric energy consistent with the de-
13 velopment of a fully competitive marketplace.

14 **SEC. 902. STUDY OF STATE REGULATION.**

15 The Federal Energy Regulatory Commission shall
16 study State regulation of the transmission component of
17 bundled retail sales of electric power and submit a report
18 to Congress containing the results of such study. The
19 study shall examine whether such regulation results in
20 undue discrimination or preference in the transmission of
21 electric energy in interstate commerce or in the sale of
22 electric energy at wholesale in interstate commerce and
23 make recommendations on amendments to Federal law.